

MONTANA LEGISLATIVE HISTORY

Chapter 468 19 95Bill H 473 S _____ Original bill & history X cH. Committee on NATURAL RESOURCES S. Committee on NATURAL RESOURCESHearing Date(s) 2/13 X cHearing Date(s) 3/15 X cEXECUTIVE ACTION 2/17 X c3/20 X c

_____ c

EXECUTIVE ACTION 3/22 X c

_____ c

_____ c

Date Out _____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

3/28 SIGNED BY PRESIDENT
3/29 TRANSMITTED TO GOVERNOR
3/31 SIGNED BY GOVERNOR
CHAPTER NUMBER 322
EFFECTIVE DATE: 10/01/95

HB 473 INTRODUCED BY KNOX, ET AL.
GENERALLY REVISE LOCAL SUBDIVISION LAWS

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO NATURAL RESOURCES		
2/09	SPONSOR FISCAL NOTE REQUESTED		
2/13	HEARING		
2/15	FISCAL NOTE RECEIVED		
2/16	FISCAL NOTE PRINTED		
2/17	COMMITTEE REPORT—BILL PASSED		
2/20	2ND READING PASSED	67	29
2/21	3RD READING PASSED	72	28
TRANSMITTED TO SENATE			
2/27	FIRST READING		
2/27	REFERRED TO NATURAL RESOURCES		
3/15	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/29	2ND READING CONCURRED AS AMENDED	26	23
3/30	3RD READING CONCURRED	27	23
RETURNED TO HOUSE WITH AMENDMENTS			
4/04	2ND READING AMENDMENTS CONCURRED	83	13
4/05	3RD READING AMENDMENTS CONCURRED	73	25
4/07	SIGNED BY SPEAKER		
4/08	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 468		
	EFFECTIVE DATE: 10/01/95		

HB 474 INTRODUCED BY COBB
PROVIDE FOR JUVENILE PROBATION OFFICER TRAINING

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO JUDICIARY		
2/09	FISCAL NOTE REQUESTED		
2/13	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	FISCAL NOTE RECEIVED		
2/16	FISCAL NOTE PRINTED		
2/17	2ND READING PASSED	100	0
2/18	3RD READING PASSED	97	2
TRANSMITTED TO SENATE			
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/07	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	39	0
3/13	3RD READING CONCURRED	47	2
RETURNED TO HOUSE			
3/15	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		

3/23 SIGNED BY GOVERNOR
CHAPTER NUMBER 205
EFFECTIVE DATE: 10/01/95

HB 475 INTRODUCED BY FORBES, ET AL.
ESTABLISH AN INTEREST ON TRUST ACCOUNTS PROGRAM FOR NOMINAL
OR SHORT-TERM DEPOSITS OF CUSTOMER FUNDS BY TITLE INSURERS
OR TITLE INSURANCE PRODUCERS

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO BUSINESS & LABOR		
2/14	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING PASSED	89	9
2/18	3RD READING PASSED	92	7
TRANSMITTED TO SENATE			
2/21	FIRST READING		
2/21	REFERRED TO BUSINESS & INDUSTRY		
3/09	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/17	2ND READING CONCURRED	47	0
3/18	3RD READING CONCURRED	46	0
RETURNED TO HOUSE			
3/20	SIGNED BY SPEAKER		
3/22	SIGNED BY PRESIDENT		
3/23	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 250		
	EFFECTIVE DATE: 10/01/95		

HB 476 INTRODUCED BY STOVALL, ET AL.
INCLUDE PROFESSIONAL FEES IN THE PUBLIC AGENCY CRITERIA FOR
SELECTING ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING
SERVICES

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO STATE ADMINISTRATION		
2/13	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING DO PASS AS AMENDED MOTION FAILED	35	64

HB 477 INTRODUCED BY SCHWINDEN, ET AL.
AUTHORIZE STATE TO NEGOTIATE A COMPACT UNDER THE FEDERAL
INDIAN GAMING REGULATORY ACT GRANTING AUTHORITY TO A TRIBE
TO OPERATE SLOT MACHINES AND ROULETTE AND TO CONDUCT THE
GAME OF CRAPS AND THE LIVE CARD GAME OF BLACKJACK OR
TWENTY-ONE WITHIN THE BOUNDARIES OF ITS RESERVATION

2/08	INTRODUCED		
2/08	FIRST READING		
2/08	REFERRED TO BUSINESS & LABOR		
2/10	FISCAL NOTE REQUESTED		
2/14	HEARING		
2/14	TABLED IN COMMITTEE		
2/16	FISCAL NOTE PRINTED		
2/23	MISSED TRANSMITTAL DEADLINE DIED IN COMMITTEE		

House BILL NO. 473

INTRODUCED BY

Knox Storrall ORR Barnett
FUCHS Feland Japha Foster

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LOCAL SUBDIVISION LAWS; MODIFYING THE REQUIREMENTS FOR AN ENVIRONMENTAL ASSESSMENT; MODIFYING BONDING REQUIREMENTS FOR PUBLIC IMPROVEMENTS; MODIFYING PARK DEDICATION REQUIREMENTS; ESTABLISHING PAYMENT CRITERIA FOR THE EXTENSION OF CAPITAL FACILITIES; ESTABLISHING MITIGATION GUIDELINES; PROVIDING FOR SUITS AGAINST LOCAL GOVERNMENTS; AMENDING SECTIONS 7-16-2324, 76-3-102, 76-3-207, 76-3-507, 76-3-603, 76-3-608, AND 76-3-609, MCA; AND REPEALING SECTIONS 76-3-606 AND 76-3-607, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-16-2324, MCA, is amended to read:

"7-16-2324. Sale, lease, or exchange of dedicated park lands. (1) For the purposes of ~~this section and part 25 of chapter 8, part 25, and this section~~, lands dedicated to the public use for park or playground purposes under ~~76-3-606 and 76-3-607~~ [section 9] or a similar statute or pursuant to any instrument not specifically conveying land to a governmental unit other than a county are considered county lands.

(2) A county may not sell, lease, or exchange lands dedicated for park or playground purposes except as provided under ~~this section and part 25 of chapter 8, part 25, and this section~~.

(3) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;

(d) publish notice as provided in 7-1-2121 of intention to sell, lease, or dispose of ~~such the park or playground~~ lands, giving the people of the county opportunity to be heard regarding ~~such the~~ action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body

1 ~~thereof~~ for the action; and

2 (f) comply with any other applicable requirements under ~~part 25 of~~ chapter 8, part 25.

3 (4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to
4 public use for park or playground purposes ~~shall~~ must be paid into the park fund and used in the manner
5 prescribed in ~~76-3-606 and 76-3-607~~ [section 9] for cash received in lieu of dedication."
6

7 **Section 2.** Section 76-3-102, MCA, is amended to read:

8 **"76-3-102. Statement of purpose.** It is the purpose of this chapter to:

9 (1) promote the public health, safety, and general welfare by regulating the subdivision of land;

10 (2) ~~to~~ prevent overcrowding of land;

11 (3) ~~to~~ lessen congestion in the streets and highways;

12 (4) ~~to~~ provide for adequate light, air, water supply, sewage disposal, parks and recreation areas,
13 ingress and egress, and other public requirements;

14 (5) ~~to~~ require development in harmony with the natural environment;

15 (6) protect the rights of property owners; and

16 (7) ~~to~~ require uniform monumentation of land subdivisions and transferring interests in real property
17 by reference to a plat or certificate of survey."
18

19 **Section 3.** Section 76-3-207, MCA, is amended to read:

20 **"76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions.**

21 (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of
22 evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject
23 to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

24 (a) divisions made outside of platted subdivisions for the purpose of relocating common boundary
25 lines between adjoining properties;

26 (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each
27 county to each member of the landowner's immediate family;

28 (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell where
29 in which the parties to the transaction enter a covenant running with the land and revocable only by mutual
30 consent of the governing body and the property owner that the divided land will be used exclusively for

1 agricultural purposes;

2 (d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the
3 aggregation of lots; and

4 (e) divisions made for the purpose of relocating a common boundary line between a single lot
5 within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement
6 on the original platted lot or original unplatted parcel continues to apply to those areas.

7 (2) Notwithstanding the provisions of subsection (1):

8 (a) within a platted subdivision filed with the county clerk and recorder, a division of lots that
9 results in an increase in the number of lots or which redesigns or rearranges six or more lots must be
10 reviewed and approved by the governing body, and an amended plat must be filed with the county clerk
11 and recorder;

12 (b) a change in use of the land exempted under subsection (1)(c) for anything other than
13 agricultural purposes subjects the division to the provisions of this chapter.

14 (3) A division of land may not be made under this section unless the county treasurer has certified
15 that all real property taxes and special assessments assessed and levied on the land to be divided have
16 been paid."

17
18 **Section 4.** Section 76-3-507, MCA, is amended to read:

19 **"76-3-507. Provision for bonding requirements to insure ensure construction of public**
20 **improvements. (1) Except as provided in subsection (2), the governing body shall require the subdivider to**
21 **complete required improvements within the subdivision prior to the approval of the final plat.**

22 ~~(2) Local regulations may provide that, in (a) In lieu of the completion of the construction of any~~
23 ~~public improvements prior to the approval of a final plat, the governing body subdivider shall require provide~~
24 ~~or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions~~
25 ~~satisfactory to it the governing body, providing for and securing the construction and installation of such~~
26 ~~the improvements within a period specified by the governing body and expressed in the bonds or other~~
27 ~~security. The governing body shall reduce bond requirements commensurate with the completion of~~
28 ~~improvements.~~

29 (b) In lieu of requiring a bond or other means of security for the construction or installation of all
30 the required public improvements under subsection (2)(a), the governing body may approve an incremental

1 payment or guarantee plan. The improvements in a prior increment must be completed or the payment or
2 guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied
3 before development of future increments.

4 (3) Approval by the governing body of a final plat prior to the completion of required improvements
5 and without the provision of the security required under subsection (2) is not an act of a legislative body
6 for the purposes of 2-9-111."

7
8 **Section 5.** Section 76-3-603, MCA, is amended to read:

9 **"76-3-603. Contents of environmental assessment.** ~~Where required, the~~ An environmental
10 assessment ~~shall~~ must accompany the preliminary plat for a major subdivision and ~~shall~~ must include:

11 (1) a description of every body or stream of surface water ~~as that~~ that may be affected by the proposed
12 subdivision, together with available ground water information, and a description of the topography,
13 vegetation, and wildlife use within the area of the proposed subdivision;

14 ~~(2) maps and tables showing soil types in the several parts of the proposed subdivision and their~~
15 ~~suitability for any proposed developments in those several parts~~ a summary of the probable impacts of the
16 proposed subdivision based on the criteria described in 76-3-608; and

17 ~~(3) a community impact report containing a statement of anticipated needs of the proposed~~
18 ~~subdivision for local services, including education and busing; roads and maintenance; water, sewage, and~~
19 ~~solid waste facilities; and fire and police protection;~~ additional relevant and reasonable information related
20 to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body.

21 ~~(4) such additional relevant and reasonable information as may be required by the governing body."~~

22
23 **Section 6.** Section 76-3-608, MCA, is amended to read:

24 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision
25 to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable
26 environmental assessment, public hearing, planning board recommendations, or additional information
27 demonstrates that development of the subdivision meets the requirements of this chapter.

28 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3),
29 as applicable.

30 (3) A subdivision proposal must undergo review for the following primary criteria:

(a) the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the subdivision to minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings, based on substantial credible evidence, to justify the mitigation required under this subsection (4).

(5) In reviewing a subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body must be guided by the following standards:

(a) Mitigation measures imposed may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.

(b) Whenever feasible, mitigation should be designed to provide some benefits for the subdivider.

(6) (a) When a minor subdivision is proposed in an area where a master plan has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the plan, the subdivision is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

(b) In order for a master plan to serve as the basis for the exemption provided by this subsection (6), the plan must, at a minimum, contain:

(i) housing, transportation, and land-use elements sufficient for the governing body to protect public health, safety, and welfare; and

(ii) a discussion of physical constraints on development that exist within the area encompassed by the proposed subdivision."

Section 7. Section 76-3-609, MCA, is amended to read:

1 **"76-3-609. Review procedure for minor subdivisions.** Subdivisions containing five or fewer parcels
2 ~~where in which~~ proper access to all lots is provided and in which no land is to be dedicated to the public
3 for parks or playgrounds are to be reviewed as follows:

4 (1) The governing body ~~must~~ shall approve, conditionally approve, or disapprove the first ~~such~~
5 minor subdivision from a tract of record within 35 days of the submission of ~~an the~~ application ~~for approval~~
6 ~~thereof~~.

7 (2) The governing body shall state in writing the conditions ~~which~~ that must be met if the
8 subdivision is conditionally approved or what local regulations would not be met by the subdivision if it
9 disapproves the subdivision.

10 (3) The requirements for holding a public hearing ~~and preparing an environmental assessment~~ shall
11 do not apply to the first ~~such~~ minor subdivision created from a tract of record.

12 (4) Subsequent subdivisions from a tract of record ~~shall~~ must be reviewed under 76-3-505 and
13 regulations adopted pursuant to that section."
14

15 **NEW SECTION. Section 8. Payment for extension of capital facilities.** A local government may
16 require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities
17 related to public health and safety, including but not limited to public sewer lines, water supply lines, and
18 storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable
19 to the subdivision.
20

21 **NEW SECTION. Section 9. Park dedication requirement.** (1) Except as provided in subsections (2),
22 (3), and (6), a subdivider shall dedicate to the governing body a cash or land donation equal to:

23 (a) 11% of the fair market value of the land proposed to be subdivided into parcels of one-half acre
24 or smaller;

25 (b) 7.5% of the fair market value of the land proposed to be subdivided into parcels larger than
26 one-half acre and not larger than 1 acre;

27 (c) 5% of the fair market value of the land proposed to be subdivided into parcels larger than 1 acre
28 and not larger than 3 acres; and

29 (d) 2.5% of the fair market value of the land proposed to be subdivided into parcels larger than 3
30 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a master plan under Title 76, chapter 1, or pursuant to zoning regulations under Title 76, chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the plans or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) land proposed for subdivision into parcels larger than 5 acres;

(b) subdivision into parcels that are all nonresidential;

(c) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for mobile homes or condominiums; or

(d) a subdivision in which only one additional parcel is created.

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both.

(5) (a) Except as provided in subsection (5)(b), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain regional parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the fair market value of the land and any improvements set aside for park and recreational purposes equals or exceeds the value of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the fair market value of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the value of the dedication required under subsection (1); or

(c) the fair market value of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the value of the dedication required under subsection (1).

(7) For the purposes of this section:

(a) "dwelling unit" means a residential structure in which a person or persons reside; and

(b) "fair market value" is the value of the unsubdivided, unimproved land.

NEW SECTION. Section 10. Violations -- actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is:

(a) arbitrary or capricious; or

(b) unlawful or exceeds lawful authority.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision if that landowner can show a likelihood of material injury to the adjoining landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) a municipality if a subdivision is proposed within its jurisdiction.

NEW SECTION. Section 11. Repealer. Sections 76-3-606 and 76-3-607, MCA, are repealed.

4 (2) [Sections 9 and 10] are intended to be codified as an integral part of Title 76, chapter 3, part
5 6, and the provisions of Title 76, chapter 3, part 6, apply to [sections 9 and 10].

6 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0473, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising local subdivision laws by modifying environmental assessment requirements, bonding requirements for public improvements, park dedication requirements, establishing payment criteria for the extension of capital facilities, establishing mitigation guidelines and providing for lawsuits against local governments.

ASSUMPTIONS:

1. The proposed legislation would become effective October 1, 1995.
2. All of the 56 county governments and all 128 municipal governments that have local subdivision regulations would revise them.
3. As directed by state law, the Department of Commerce (DOC) provides advisory technical assistance to counties, municipalities, business persons, developers, land surveyors, and citizens, to help them understand and comply with planning and development statutes (including subdivision statutes).
4. Estimated DOC costs are based upon actual costs incurred by the DOC in FY94 and FY95 when the subdivision law was substantially changed by the 1993 Legislature. DOC projected costs for HB473 include updating two advisory educational publications and conducting eight educational workshops across the state.
6. The proposed legislation amends only the Montana Subdivision and Platting Act, not the Sanitation Subdivision Act administered by the Department of Health and Environmental Sciences.

FISCAL IMPACT:

Expenditures:

Department of Commerce:	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Operating Expenses	16,000	16,000

Funding:

General Fund (01)	16,000	16,000
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Additional costs for the 56 county governments (\$147,000) and 128 municipal governments (\$201,000) are estimated to total \$348,000. These estimates are derived from approximate costs incurred by county and municipal governments to update subdivision regulations passed by the 1993 Legislature.

TECHNICAL NOTES:

Section 6 of the proposed legislation (page 5, line 19) states, "Whenever feasible, mitigation should be designed to provide some benefits for the subdivider." There is no definition of the term "benefits". The term could cause confusion in implementing the legislation.

David Lewis 2-15-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

DICK KNOX, PRIMARY SPONSOR

DATE

Fiscal Note for HB0473, as introduced

HB 473

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By REP. BILL TASH, VICE CHAIRMAN, on February 13, 1995, at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 472, HB 478, HB 430, HB 473, HB 483
Executive Action: HB 351 cont'd. Do Pass Amendments
HB 215 Do Pass As Amended
HB 218 Tabled
HB 341 Tabled
SB 203 Postponed
HB 412 Do Pass As Amended
HB 472 Do Pass As Amended
HB 478 Do Pass As Amended
HB 483 Tabled

HOUSE NATURAL RESOURCES COMMITTEE

February 13, 1995

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Gail Abercrombie, Executive Director, Montana Petroleum Association

Larry Zink, Vice President, Montana Sulphur Chemical Company, Billings

Ralph Stone, City Council, Billings

Informational Testimony: None

Questions From Committee Members and Responses:

REP. EMILY SWANSON asked Mr. Hart to explain the State Implementation Plan (SIP) process. Mr. Hart said a more stringent test to air standards is what is called computer modeling. SIP uses a computer model to set new emission limits for all industry in the Billings area. The process was started in March 1993 and is effective March 1998. There will be continuous emission monitors installed in every stack and there will have to be reductions in emissions. Exxon's reductions will go from approximately 11,500 tons a year of SO₂ to approximately 6,000 tons of SO₂ a year. REP. SWANSON asked Mr. Hart if SIP was binding or voluntary. Mr. Hart said SIP is a requirement of EPA.

REP. SWANSON asked REP. BOHLINGER to give his opinion of SIP. REP. BOHLINGER said it is the feeling of many of the people in the Billings community that the health care issue is not really addressed through the SIP process.

REP. HAL HARPER asked Mr. Brookes if the city commission or the county commission think that sulphur dioxide in Billings poses a particular health problem to the citizens. Mr. Brookes said both commissions are concerned about the health of the citizens. The Billings Chamber of Commerce and the majority of the Yellowstone County Commissioners support the position of the resolution of the city council and that is to let the SIP process go forward and not repeal the Hanna Bill.

Closing by Sponsor:

REP. BOHLINGER closed.

Tape 4, Side A

CHAIRMAN KNOX turned the Chair over to VICE CHAIRMAN TASH for the duration of the hearing on HB 473.

HEARING ON HB 473

Opening Statement by Sponsor:

REP. DICK KNOX, House District 93, Winifred, reviewed HB 473 section by section.

Proponents' Testimony:

Bob Gilbert, Former Legislator, said HB 473 the result of HB 280 that was heard during the 1993 session. **Mr. Gilbert** said he had been working on subdivision reform in the state since 1985. The bill protects the rights of property owners. He pointed out that the addition of the word "gift" on page 2, line 28, would allow people in the ranching industry to give portions of their ranch to their children without being subject to review. Page 4, lines 4 through 6, protects the legislative body from lawsuit if the county commissioners approve the final plat before improvements are put in, or before the necessary bonding is there and people are damaged.

Ernie Dutton, Billings Association of Realtors, supported HB 473, but said the association believes that there is a need for a tightly controlled exemption allowing the single division of land. The current minor plat review costs between \$1,000 and \$2,000 more than what a single division exemption would cost. **Mr. Dutton** suggested a five year restriction that would allow a property owner to singly divide a piece of property only once every five years.

Collin Bangs, Montana Association of Realtors. Written testimony. **EXHIBIT 35**

Steve Mandeville, Real Estate Broker, said HB 473 is good legislation and urged the committee to support it.

John Shontz, Montana Association of Realtors, said the language on page 4, line 4, of the bill states that if a local government approves a plat or returns a bond to a developer before the improvements are completed on the development, it can be open to lawsuit. That language protects the public; it ensures that the developers act responsibly and that improvements on subdivisions are done properly. Section 8 provides that the local government may assess a subdivider the capital costs of providing services but must reasonably reflect the expected impacts directly attributable to the subdivision. A very important part of the bill is that for the first time local governments would be allowed to use dedicated funds for maintenance of existing parks that will serve the people that live in the subdivision.

The following proponents expressed support of HB 473:

Russ Ritter, Inland Properties, Missoula

John Bloomquist, Montana Stockgrowers Association

Peggy Trenk, Western Environmental Trade Association

Don Allen, Montana Wood Products Association

Andy Skinner, Self

Pam Willett, Broker/Owner, ERA Property Store, Billings. EXHIBIT 36

Opponents' Testimony:

Blake Wordal, Lewis and Clark County Commissioner and Montana Association of Counties (MACO) said MACO surveyed its membership about the bill and received no support. Most of the comments received were based upon the fact that it has only had 18 months to deal with the changes made in 1993 is still trying to sort all of those changes out. MACO is disappointed that the bill does not have a fiscal note. There would be a definite cost to every county to integrate the requirements of HB 473 into county rules and regulations.

Tape 4, Side B

Jim Richard, Montana Association of Planners, said HB 473 should be tabled because the problem it addresses is not done properly. Mr. Richard offered proposed amendments to the bill. EXHIBIT 37

The following opponents expressed their opposition to HB 473:

Andrew Epple, Planning Director, City of Bozeman and Gallatin County. EXHIBITS 38, 39 and 40

John Beaudry, Planning Director, Stillwater County. EXHIBITS 41, 42, 43 and 44

Jim Campbell, City of Billings

Janet Ellis, Montana Audubon Legislative Fund

Don Williams, Administrator, City of Hamilton

Debbie Smith, Sierra Club

Ellen Woodbury, Park County. EXHIBITS 45, 46, 47, 48 and 49

Ann Hedges, Montana Environmental Information Center

Kathy Macefield, Planning Director, City of Helena. EXHIBIT 50

Glenna Obie, Jefferson County Commissioner

Webb Mandeville, Chairman, Mandevill Agency. EXHIBIT 51

Tonia Bloom, League of Women Voters. EXHIBIT 52

Informational Testimony: None

Questions From Committee Members and Responses:

REP. EMILY SWANSON said one of the issues that came up during the drafting of HB 473 was that section 5 would encourage subdividing one minor subdivision at a time without review and asked REP. KNOX for his comments. REP. KNOX said the provisions under section 5 a minor subdivision would be reviewed. The provisions of statute 76-3-608 give local governments a great deal of flexibility and ability to provide very explicit and stringent review criteria. REP. SWANSON asked REP. KNOX why he decided to use fair market value rather than area description under the park dedication requirement section of the bill. REP. KNOX said he believed the fair market value was a reasonable way to approach the subdivider tariff. REP. SWANSON asked REP. KNOX how the fair value market system would work. REP. KNOX said based on the criteria in section 9, subsections (a), (b), (c), and (d), there would have to be an appraisal of the unimproved, unsubdivided land, in order to establish its value. REP. SWANSON asked REP. KNOX if the subdivider would be responsible for the appraisal. REP. KNOX replied yes.

REP. CLIFF TREXLER asked Mr. Richard if the price the subdivider paid for the land would establish the value. Mr. Richard said it might but in many cases local governments don't use that method. When there is a difference of opinion between the developer and the local government, an appraisal is almost always required. REP. TREXLER asked Mr. Richard to define "any person aggrieved" under section 10 of his proposed amendments. Mr. Richard said it means a person with a specific personal and legal interest in a subdivision whose interest has been injured.

Closing by Sponsor:

REP. KNOX said it was obvious that the city and county planners don't like the bill and he sympathized with their problems. The provisions that are in HB 473 were the consensus of the House of Representatives in the 1993 session and should have been signed by the Governor into law. It is the obligation and the duty of this legislative body to address problems as it sees them without having to worry about problems of local planners. A fiscal note has been requested.

Tape 5, Side A

REP. KNOX said Mr. Richard seemed to have a lot of problems with section 5 of the bill. In addition to the provisions of 72-3-608, MCA, as they apply to section 5, 76-5-505 applies to minor subdivisions and gives local governments the ability to require additional, reasonable environmental information before approving additional minor subdivisions of a tract. These provisions allow local governments, if they so choose, to adopt rules that can be applied to minor subdivisions before granting approval. The Montana Environmental Protection Agency (MEPA) will also be used in minor subdivision reviews because the Department of Health and

Environmental Sciences (DHES) must approve the minor subdivision's impact on water quality as it relates to septic tanks in the subdivision. **Mr. Richard** is also concerned that section 10 of the bill removes citizens from the appeal process. Section 10 provides that any group that has a problem with the process can go to the county commissioners in their area and if it can convince the commissioners to sue on their behalf, the commissioners have the power to do so. The same thing holds true within the municipalities where the commissioners have jurisdiction. The people have not been cut out of the process. They still have the right through their governing bodies to work towards an appeal.

REP. KNOX said the bill adds the protection of the rights of the property owners to the statement of purpose. It allows the gift of land to the agriculture exemption section, allowing a land owner to mitigate the impact of the gift in the state taxes that could be imposed on the next generation. It improves the bonding provisions in places in statute commonly used in bonding practices. It will give local governments greater flexibility in establishing rules for minor subdivisions. It adds review of a subdivision impact on water user facilities, therefore, the impact on ditches, canals and pumping stations must be considered. It improves mitigation procedures by requiring that local governments issue written findings that mitigation is required. It also provides clear language that will enable local governments to deny a subdivision if the impacts of the subdivision cannot be mitigated. It puts in place a common sense approach to governing park land dedication. When there are a large number of lots in a subdivision, the maximum dedication will be used. As the lot sizes increase and more open space is created, less dedication is required. The bill allows for money dedicated by the developer for parks to be used for maintenance, thus addressing a statewide problem of neglected weed-infested parks. HB 473 addresses the problems created by a Supreme Court decision that denies the right of appeal to affected parties by a decision of a local governing body to deny a preliminary plat.

REP. KNOX asked the committee for its approval of HB 473.

CHAIRMAN KNOX resumed the Chair.

HEARING ON HB 483

Opening Statement by Sponsor:

REP. ALVIN ELLIS, House District 23, Red Lodge, said although all the states created after 1789 were to be added to the Union on an equal basis with the original states, 11 states were required to include a disclaimer in their constitution. Section 1 of ordinance 1 of the Montana Constitution disclaims all right and title to all unappropriated public lands lying within its boundaries. With so much land under federal ownership in some counties and in the state as a whole, tremendous stress is placed

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 2-13-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		



MONTANA ASSOCIATION
OF REALTORS®

The Voice for Real Estate™ in Montana

EXHIBIT 35

DATE 2-13-95

HB 473

EXECUTIVE OFFICES
208 North Montana, Suite 105
Helena, MT 59601

Telephone 406 443-4032
In Montana 800-477-1864
Fax 406 443-4220

February 13, 1995

The Honorable Richard Knox, Chairman
Committee on Natural Resources
Montana House of Representatives
Capitol Station
Helena, Montana 59620

RE: House Bill 473

Dear Chairman Knox,

HB 473 is reasoned legislation that addresses environmental concerns while taking into account the needs and rights of property owners in Montana.

The Bill:

- Section 2. Adds language to the purpose section of the statute that protects the rights of property owners. The section will provide Legislative guidance to Montana Courts when the courts is asked to interpret the subdivision statute. The new section assures that, for the first time, the rights of property owners will be taken into account when local governments review requests for subdivisions.

- Section 3. Adds property transfer by gift of agricultural land so long as the land is continually used for agricultural purposes. This section will ease the current inability of persons to transfer agricultural land on to the next generation without subsection to serious gift and estate tax consequences.

- Section 4. This section requires that developers complete improvements with a subdivision before approving a final plat. In the event bonding is used to provide security for improvements, the section modifies the bonding requirements by requiring incremental bonding and permitting bonding of projects finished in phases. This section will assure that improvements are completed while keeping development costs in sync with revenue flows.



- Section 5. This section lowers costs where five or less parcels are subdivided or readjusted by limiting environmental assessments (EAs) to major subdivisions. The section also asks that local governments, within statutory limits, clearly articulate EA criteria via rule making. This section can reduce the cost of the division of small tracts by as much as \$1,500.00 per tract.

In addition, the section will give Montana landowners a clearer understanding of the local rules and regulations they must follow when subdividing larger parcels of land than is the case today. The section also gives local governments more flexibility in adopting subdivision rules that meet local needs.

A concern mentioned by some is that a subdivider will be able to escape environmental review of a large number of land divisions by creating minor subdivisions (five parcels per year over a period of years). Under 76-5-505 MCA (not subject to amendment by this bill) local governments can impose reasonable requirements for minor subdivisions created from a tract of land. Thus, local governments retain the right to require that environmental information be developed on minor subdivisions of a tract of land. Furthermore, under 76-6-608 MCA, local governments retain the ability to determine the extent to which reasonable environmental information is necessary before approving additional subdivisions of a tract.

Finally, we note that public hearings are still required under 76-5-609 MCA for additional (beyond the first) minor subdivisions of a tract of land. The public has a clear opportunity to comment on and therefore the opportunity to impact the environmental consequences of multiple divisions of a tract of land through the use of this statute.

- Section 6. This section also increases the local government review criteria by including:

- 1) review of subdivision's impact on agricultural water user facilities.
- 2) mitigation requirement but only if the local government justifies the requirements in writing by substantial credible evidence.
- 3) an exemption for minor subdivisions in certain master planned areas.

Under this section, a subdivision's impacts on agricultural water user facilities such as ditches, canals and pumping facilities must be taken into account by the local government when reviewing a subdivision.

This section also provides, for the first time, that the local government can require that a subdivider minimize and mitigate significant adverse impacts that a subdivision may have on agriculture, ag. water use facilities, local services, the environment, wildlife & habitat, as well as public health and safety. the local government will also be able to disapprove a plat if mitigation is not possible.

To assure that mitigation requirements or reasons for denial are reasonable, the section also requires the local government imposing mitigation on a subdivider must issue written findings based on substantial credible evidence that mitigation is necessary or the plat denied.

This section will assure that a local government does not act in an arbitrary or capricious manner thus avoiding litigation resulting from its subdivision decisions. The section will also assure that a local government makes subdivision decisions based only on the specific criteria articulated by the legislature.

The section provides that certain minor subdivisions are exempt from review if the local government has a master plan in place and the minor subdivision meets the criteria of the master plan and any zoning governing the parcel to be divided. This provision, if properly implemented, will save the purchaser of a parcel as much as \$2,500.00 since the full blown subdivision review will no longer be necessary without

- Section 7. Clarifies that minor subdivisions are not subject to environmental assessments.

- Section 8. This section allows local governments to require developer to pay for capitol improvements that are directly attributable to the subdivision. This is a new section in the law. The section assures that subdivisions do not overwhelm the current service base of local government. The section also provides that the developer is required only to pay for capitol services that are reasonably and directly related to the subdivision.

- Section 9. the section makes the park dedication statutes more flexible by

- 1) adopting a sliding cash in lieu of scale based on lot size. The scale recognizes that smaller lots will create the need for additional park space and therefore places a premium on the "cash in lieu" value of small lots.
- 2) Creating certain exemptions from park land. The section recognizes, for example, that dedicated parks are not necessary to provide open spaces when the lots in a subdivision exceeds five acres in size.

3) Allowing donated funds to be used for park maintenance.

The section allows local governments the ability to use funds paid in lieu of land to be used for the maintenance of parks to be used by residents of the subdivision. The section accepts the wisdom of maintenance of current facilities in light of increased use instead of simply expanding a local government's thinly stretched existing service base by creating additional parks. The section requires that current park services must be reasonably available and within reach of subdivision residents.

- Section 10 Clarifies that developers, adjacent landowners, and local governments can seek judicial relief from preliminary plat decisions and sets thresholds for suit. This section recognizes that a preliminary plat is, for all practical purposes, the final decision document of the local government.

The section therefore specifically overturns the Montana supreme court decision in City of Kalispell v. Flathead County, 93-069 (1993). In that decision, the court opined that a decision on a preliminary plat could not be judicially reviewed because the plat was not the final administrative finding of the local government. The Court held that because the administrative review process was not exhausted, the plaintiff lacked standing to seek judicial relief.

The section also clarifies who can bring suit. In the past, "standing" determined who could bring suit against a local government regarding its decision on a subdivision. A person's standing, or her/his ability to show harm or damage as a result of a local government decision, was open to judicial interpretation on a case by case basis only.

The section defines who can bring suit against a local government for its decision regarding a preliminary plat. First, the section permits a developer to bring suit against a local government for damages in the event the local government's decision is arbitrary or capricious, is unlawful, or exceeds its lawful authority. The potential for suit to be brought under this section is substantially reduced by the local government mitigation requirements found in section 6 of the bill. The language in section 6 requiring local governments to submit mitigation requirements in writing and supported by reasonable credible evidence will assure that local government act in a responsible and legal manner.

Second, the section further permits a number of stakeholders in a subdivision to turn to the courts to challenge a local government decision regarding a preliminary plat in state district court. Challenges will probably not be heard by the courts

if the plaintiff has failed to fully participate in the public subdivision review process and any related master plan and zoning public hearings. Any challenger will be also required to illustrate, by a preponderance of the evidence, that the local government acted unreasonably under the controlling statutes, unlawfully or beyond the scope of its authority.

The subdivider can challenge the decision in district court. A person who owns land contiguous and who can demonstrate the likelihood of material injury to his/her property can challenge the local government's decision. We note that for both the subdivider and his/her neighbor, this bill provides protection of private property rights under section 2.

Neighbors who are not contiguous to the subdivision but who suffer a decline in the quality of their property because of activity caused by the subdivision will be able to bring suit against the developer and/or the subdivision residents under Montana's nuisance and trespass laws. The bill in no way diminishes the ability of any party to seek redress or abatement of a nuisance (such as noise, dust, or actual trespass) under Montana law.

A local government may also bring an action in district court against another local government concerning a subdivision decision. This does occur as the case noted above relates. This provision is particularly important for two reasons. First, local governments may have conflicting agendas and jurisdictions. Second, local governments provide the citizens' voice in the planning and development process. Third, local governments have been given certain police powers by the Legislature. In the land development arena, local governments have the power to protect the public health and safety.

First, local governments in Montana may have conflicting jurisdictions over subdivision control. We note that certain cities possess certain jurisdictional controls up to four and one half miles beyond their municipal boundaries. This section gives municipalities the authority to seek judicial relief from decisions made, for example, by county commissioner that are contrary to the municipality's best interests.

Second, local governments represent the citizen's voice in planning decisions. Acting through their local governments, citizens can seek reversal of a competing local government's decision to issue or deny a preliminary plat. The bill does prevent undue harassment of orderly development. While the bill limits persons with no direct interest in the subdivision from litigating a local government decisions, the bill specifically allows any citizen to petition their local elected officials to bring suit on behalf of their community.

Furthermore, persons with no direct interest in a subdivisions are also encouraged as well as afforded every opportunity to participate in the public process regarding zoning, planing and the local government review of the specific subdivision itself.

The section affords all Montanans and their local governments far more access to judicial relief from a local government decision to approve or deny a preliminary plat than the law currently affords. The section also assures that orderly development approved by the proper authorities will NOT be subjected to delays and harassment through frivolous lawsuits.

Third, local governments have the power to regulate land use activity under the state's police powers. The Legislature, through HB 473, enhances the powers of local governments to assure that public safety and health concerns are met. For example, local governments have the ability to designate areas in their jurisdiction that may be environmentally sensitive through master planning and zoning. Local governments are also afforded the opportunity to advise everyone up front what are deemed environmental sensitive areas.

If we can be of further information, please let us know.

Sincerely,


Collin Bangs, Chairman
Legislative Committee
JMS/11



EXHIBIT 36
DATE 2-13-95
HB 473

ERA® PROPERTY STORE

REPRESENTATIVE DICK KNOX
NATURAL RESOURCES DEPT
HELENA, MT

I URGE YOU TO VOTE IN FAVOR OF
H B 473.

THANK YOU.

PAM WILLETT
BROKER/OWNER



EXHIBIT 31
DATE 2-13-95
HB 473

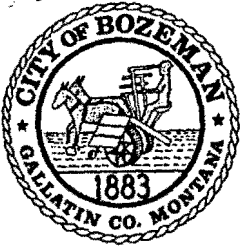
AMENDMENTS TO HOUSE BILL 473

Requested by the Montana Association of Planners

1. Page 4, line 10
Strike; "for a major subdivision"
2. Page 5, lines 10 through 19
Strike in their entirety
3. Page 5, line 30
Following : "discussion of"
Strike: "physical"
4. Page 6, line 22
strike: "governing body"
insert: "public for parks or recreation areas"
5. Page 6, lines 23, 25, 27, and 29
Strike: "fair market value"
Insert: "area"
6. Page 7, line 11
Following: "spaces for"
Insert: "recreational vehicles,"
7. Page 7, line 29
Strike: "fair market value"
Insert: "area"
8. Page 7, line 30
Following: "exceeds"
Strike: "the value of"
9. Page 8, lines 3, 4 and 5
Strike in their entirety
Insert: "the area of land protected under subsection (6)
(b)(i) equals or exceeds the dedication required
under subsection (1); or"
10. Page 8, lines 6, 7, and 8
Strike in their entirety
Insert: "the area of land provided in combination under
subsection (6)(a) and (6)(b) equals or exceeds the
dedication required under subsection (1)."

11. Page 8, line 13,
Strike Section 10 in its entirety
Insert:

"NEW SECTION. Section 10. Appeal procedure. Any person aggrieved by a decision of the governing body to approve, conditionally approve or disapprove a proposed preliminary plat or final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made."



THE CITY OF BOZEMAN

35 NO. BOZEMAN AVE.

CARNEGIE BUILDING

BOZEMAN, MONTANA 59711-0640

P.O. BOX 640

EXHIBIT 38

DATE 2-13-9

HB 473

BUILDING INSPECTION PHONE/TDD (406) 582-2375

ENGINEERING DEPARTMENT PHONE/TDD (406) 582-2380

February 13, 1995

Representative Dick Knox, Chairman
HOUSE NATURAL RESOURCES COMMITTEE
Capitol Station
Helena, MT

RE: HOUSE BILL 473 -- OPPOSE

Dear Representative Knox and Members of the Committee:

The City of Bozeman urges you not to pass House Bill 473 for the following reasons:

1. THE REQUIRED CHANGES WOULD CONSTITUTE AN UNFUNDED MANDATE TO LOCAL GOVERNMENTS -- Thousands of dollars were spent in 1993 to amend local subdivision regulations as a result of changes made in the Montana Subdivision and Platting Act by the Legislature two years ago. Requiring local governments to once again incur the expense of advertising and holding public hearings, preparing reports and findings, and codifying required amendments to their subdivision regulations, without providing state funds to do so, constitutes an unfunded mandate.
2. THE PROPOSED CHANGES ARE UNNECESSARY -- The current Subdivision and Platting Act works well, providing a solid framework within which development can occur. In 1994, in the Bozeman planning area alone, 829 new residential subdivision lots gained preliminary plat approval; 511 received final plat approval -- all within the current statutory framework. Let's not embrace change just for the sake of change.
3. THE PROPOSED LANGUAGE IS VAGUE -- The use of vague and ambiguous terms, especially in Section 6, will create a bonanza for land use attorneys who will tie up subdivision approvals in courts for years. For example, what is "substantial credible evidence?" What is meant by "whenever feasible?" How many "benefits" to a developer are needed to make up "some benefits?" At what point do regulations "unreasonably restrict" a landowner's ability to develop land?

Dozens of new Attorney General Opinions and court cases will be necessary over the next several years to interpret these

Representative Dick Knox
February 13, 1995
page 2 of 2

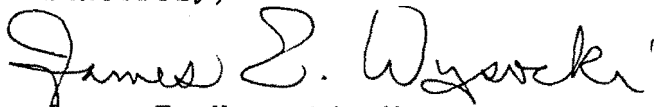
and other phrases found throughout the proposed amendments. But in light of the fact that the Act is working well, why create the confusion?

4. A "SECOND CLASS" OF CITIZEN WOULD BE CREATED -- Section 10 of HB 473 restricts who can appeal a subdivision decision to district court. The general public, who might have an interest in a development if it were to raise their property taxes, could not appeal. Neither could the local association of homebuilders, even if a subdivision decision could negatively effect their business. Limiting access to the courts to a special class of citizens seems un-American and may very well be unconstitutional.
5. INCREASED COSTS TO THE DEVELOPER -- Section 9 of HB 473 complicates and adds expense to the current method of calculating park land dedication. Whereas now a simple area method is used for calculating the requirement, under HB 473 a developer would have to hire an appraiser, calculate real estate values, then convert the dollar value into an area requirement.

In conclusion, House Bill 473 appears to be unnecessary legislation. The current Subdivision and Platting Act, as amended in 1993, is working reasonably well and should be allowed to continue to do so. We do not need to complicate and add expense to the subdivision review process.

For these reasons, the City of Bozeman urges you to give a DO NOT PASS recommendation on House Bill 473.

Sincerely,


James E. Wysocki, Manager
CITY OF BOZEMAN



BOZEMAN CITY-COUNTY PLANNING OFFICE

35 NORTH BOZEMAN AVENUE
P.O. BOX 640, BOZEMAN, MONTANA 59771-0640
PHONE: (406) 582-2360 FAX: (406) 582-2363

February 13, 1995

EXHIBIT 34
DATE 2-13-95
HB 473

Representative Dick Knox, Chairman
HOUSE NATURAL RESOURCES COMMITTEE
Capitol Station
Helena, MT

RE: HOUSE BILL 473 -- OPPOSE

Dear Representative Knox and Members of the Committee:

The Bozeman City-County Planning Board urges you not to pass House Bill 473 for the following reasons:

1. THE REQUIRED CHANGES WOULD CONSTITUTE AN UNFUNDED MANDATE TO LOCAL GOVERNMENTS -- Thousands of dollars were spent in 1993 to amend local subdivision regulations as a result of changes made in the Montana Subdivision and Platting Act by the Legislature two years ago. Requiring local governments to once again incur the expense of advertising and holding public hearings, preparing reports and findings, and codifying required amendments to their subdivision regulations, without providing state funds to do so, constitutes an unfunded mandate.
2. THE PROPOSED CHANGES ARE UNNECESSARY -- The current Subdivision and Platting Act works well, providing a solid framework within which development can occur. In 1994, in the Bozeman planning area alone, 829 new residential subdivision lots gained preliminary plat approval; 511 received final plat approval -- all within the current statutory framework. Let's not embrace change just for the sake of change.
3. THE PROPOSED LANGUAGE IS VAGUE -- The use of vague and ambiguous terms, especially in Section 6, will create a bonanza for land use attorneys who will tie up subdivision approvals in courts for years. For example, what is "substantial credible evidence?" What is meant by "whenever feasible?" How many "benefits" to a developer are needed to make up "some benefits?" At what point do regulations "unreasonably restrict" a landowner's ability to develop land?

Dozens of new Attorney General Opinions and court cases will be necessary over the next several years to interpret these

Representative Dick Knox
February 13, 1995
page 2 of 2

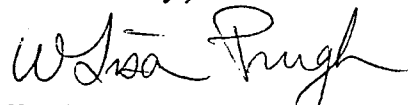
and other phrases found throughout the proposed amendments. But in light of the fact that the Act is working well, why create the confusion?

4. A "SECOND CLASS" OF CITIZEN WOULD BE CREATED -- Section 10 of HB 473 restricts who can appeal a subdivision decision to district court. The general public, who might have an interest in a development if it were to raise their property taxes, could not appeal. Neither could the local association of homebuilders, even if a subdivision decision could negatively effect their business. Limiting access to the courts to a special class of citizens seems un-American and may very well be unconstitutional.
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In conclusion, House Bill 473 appears to be unnecessary legislation. The current Subdivision and Platting Act, as amended in 1993, is working reasonably well and should be allowed to continue to do so. We do not need to complicate and add expense to the subdivision review process.

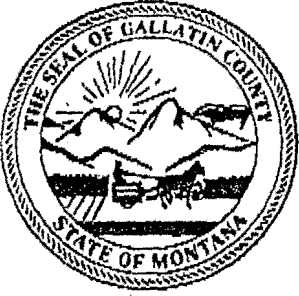
For these reasons, the Bozeman City-County Planning Board urges you to give a DO NOT PASS recommendation on House Bill 473.

Sincerely,



W. Lisa Prugh, President
BOZEMAN CITY-COUNTY PLANNING BOARD

EXHIBIT 40
 DATE 2-13-95 County Commission
 HB 473
 Kris Dunn
 Jane Jelinski
 Phil Olson



GALLATIN COUNTY
 331 West Main, Rm. 301 • Bozeman, MT 59715

Phone (406) 582-3000
 FAX (406) 582-3003

February 13, 1995

Representative Dick Knox, Chairman
 House Natural Resources Committee
 Capitol Station
 Helena, MT

Post-it* Fax Note	7671	Date	2/13	# of pages	2
To	Andy Epple				
Co./Dept.					
Phone #					
Fax #	3002				
From	Pat Lewis				
Co.					
Phone #					
Fax #					

RE: HOUSE BILL 473 -- OPPOSE

Dear Representative Knox and Members of the Committee:

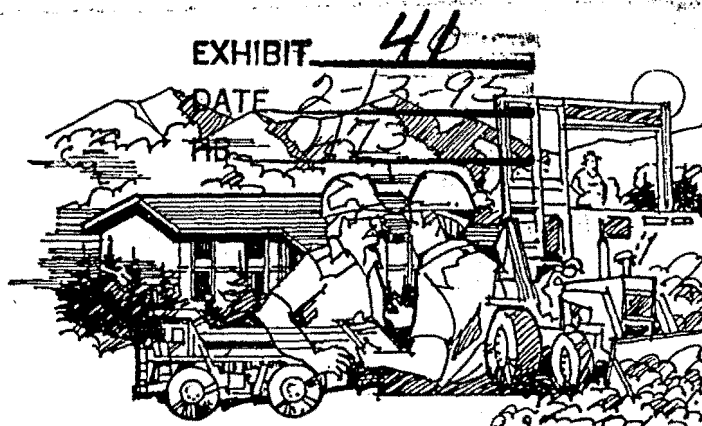
Gallatin County urges you not to pass House Bill 473 for the following reasons:

1. **THE REQUIRED CHANGES WOULD CONSTITUTE AN UNFUNDED MANDATE TO LOCAL GOVERNMENTS.** Thousands of dollars were spent in 1993 to amend local subdivision regulations as a result of changes made in the Montana Subdivision and Platting Act by the Legislature two years ago. Requiring local governments to once again incur the expense of advertising and holding public hearings, preparing reports and findings, and codifying required amendments to their subdivision regulations, without providing state funds to do so, constitutes an unfunded mandate.
2. **THE PROPOSED CHANGES ARE UNNECESSARY.** The current Subdivision and Platting Act works well, providing a solid framework within which development can occur. In 1994, in the Bozeman Planning Area alone, 829 new residential subdivision lots gained preliminary plat approval; and 511 received final plat approval -- all within the current statutory framework. Let's not embrace change just for the sake of change.
3. **THE PROPOSED LANGUAGE IS VAGUE.** The use of vague and ambiguous terms, especially in Section 6, will create a bonanza for land use attorneys who will tie up subdivision approvals in courts for years. For example, what is "substantial credible evidence?" What is meant by "whenever feasible?" How many "benefits" to a developer are needed to make up "some benefits?" At what point do regulations "unreasonably restrict" a landowner's ability to develop land?

Dozens of new Attorney General Opinions and court cases will be necessary over the next several years to interpret these and other phrases found throughout the proposed

Stillwater County Planning Office

P. O. Box 881
Columbus, Montana 59019
Phone 406-322-4439
Fax 406-322-4698



Planning for the Future

House Natural Resources Committee
Capitol Station
Helena, MT 59620

February 13, 1995

RE: **OPPOSE HB 473**

Members of House Natural Resources Committee:

We just went through a lengthy implementation process as a result of the 1993 legislative changes generally revising local subdivision laws. I am opposed to HB 473 for the following reasons.

- The direct cost of amending local subdivision regulations in our county is approximately \$3,000.
- Subdivision review currently takes the full 60 days for major subdivisions and up to 35 days for minor subdivisions. The additional requirements contained in HB 473 sections 2, 4, 6, 9, and 10 are all expected to require more time to review. This results in delays and associated costs. The time specified for review of preliminary plats in 76-3-604 MCA may need to be increased to 120 days for major subdivisions and 60 days for minor subdivisions to accommodate these proposed legislative mandates. The alternative is to place the full burden of proof onto the subdivider.
- Additional costs associated with implementation of HB 473, if it should become law, will likely be passed on to the subdividers through increased fees.
- Section 4 places a greater burden on local governments and exposes them to additional liabilities. The end result is at the taxpayers expense.
- Section 5 strikes clear language and replaces it with vague language. Our experience with subdivision review indicates vague statutory language leads to confusion.
- Section 6 places a greater burden of proof on local governments and increases the risk of litigation. This is viewed as an unfunded mandate which only leaves local governments with two options. Increase fees and shift the burden to the subdivider.

Stillwater County Planning Office

P. O. Box 881
Columbus, Montana 59019
Phone 406-322-4439
Fax 406-322-4698

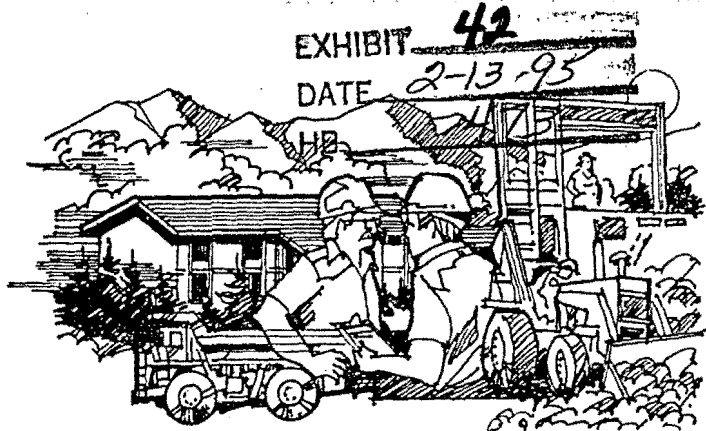


EXHIBIT **42**
DATE **2-13-95**

Planning for the Future

House Natural Resources Committee
Capitol Station
Helena, MT 59620

February 13, 1995

RE: OPPOSE HB 473

Members of House Natural Resources Committee:

We just went through a lengthy implementation process as a result of the 1993 legislative changes generally revising local subdivision laws. I am opposed to HB 473 for the following reasons.

- The direct cost of amending local subdivision regulations in our county is approximately \$3,000.
- Subdivision review currently takes the full 60 days for major subdivisions and up to 35 days for minor subdivisions. The additional requirements contained in HB 473 sections 2, 4, 6, 9, and 10 are all expected to require more time to review. This results in delays and associated costs. The time specified for review of preliminary plats in 76-3-604 MCA may need to be increased to 120 days for major subdivisions and 60 days for minor subdivisions to accommodate these proposed legislative mandates. The alternative is to place the full burden of proof onto the subdivider.
- Additional costs associated with implementation of HB 473, if it should become law, will likely be passed on to the subdividers through increased fees.
- Section 4 places a greater burden on local governments and exposes them to additional liabilities. The end result is at the taxpayers expense.
- Section 5 strikes clear language and replaces it with vague language. Our experience with subdivision review indicates vague statutory language leads to confusion.
- Section 6 places a greater burden of proof on local governments and increases the risk of litigation. This is viewed as an unfunded mandate which only leaves local governments with two options. Increase fees and shift the burden to the subdivider.

- Section 10 of HB 473 invites litigation. This can be a waste of everyone's time and resources.

We cannot afford the additional liabilities and unfunded mandates contained in HB 473!
Please vote no on HB 473.

OPPOSE HB 473!

Sincerely,


John Beaudry
Planning Director



EXHIBIT 43
DATE 2-13-95
HB 473

County of Stillwater State of Montana

BOARD OF COUNTY COMMISSIONERS

P.O. Box 147

Columbus, Montana 59019

House Natural Resources Committee
Capitol Station
Helena, MT 59620

February 10, 1995

RE: **OPPOSE HB 473**

Members of House Natural Resources Committee:

We are opposed to HB 473 , changes to the Subdivision and Platting Act. We just went through a lengthy and expensive implementation process as a result of the 1993 changes. We are not interested in doing it again. We oppose HB 473 because it exposes our county taxpayers to greater legal and financial liabilities. The biennial tinkering with the Subdivision and Platting Act by the Legislature is a waste of our resources.

Stillwater County cannot afford greater legal and financial liabilities or any more unfunded mandates. We hope you will vote no on HB 473.

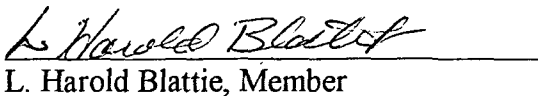
WE OPPOSE HB 473!

Sincerely,

BOARD OF COUNTY COMMISSIONERS


Vicki J. Hyatt, Chairperson


Clifford A. Bare, Member


L. Harold Blattie, Member

OFFICE OF THE COUNTY ATTORNEY
STILLWATER COUNTY, MONTANA

38 North 4th Street
P.O. Box 179
Columbus, Montana 59019
(406)322-4333

Blair Jones
County Attorney

EXHIBIT 44
DATE 2-13-95
HB 473

Robert Eddleman
Deputy

February 10, 1995

House Natural Resources Committee
Capitol Station
Helena, Montana 59620

RE: Opposition to HB 473

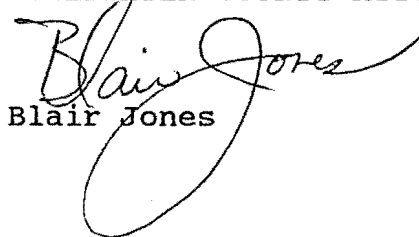
Members of House Natural Resources Committee:

I am opposed to the changes to the Subdivision and Platting Act proposed in HB 473 because it exposes Montana counties to substantially greater legal liability. The proposed changes to sections 76-3-102(6), 76-3-507(3), and 76-3-608(4), MCA, constitute an unwarranted reduction of governmental immunity applicable to counties; provides for greater burdens of proof to be shouldered by counties in the exercise of their review authority; and even invites litigation by the express wording of the proposed statute. Additional legal liability placed on local governments ultimately becomes an additional burden for the taxpayers.

Local governments have enough liability exposure. I respectfully request that you vote no on HB 473.

Very truly yours,

STILLWATER COUNTY ATTORNEY


Blair Jones

BJ/sf

EXHIBIT 45
DATE 2-13-95
HB 473

Park County

PLANNING OFFICE

414 East Callender — Livingston, MT 59047 — 1-(406) 222-6120

February 13, 1995

House Natural Resource Committee
Capital Station
Helena, MT 59620

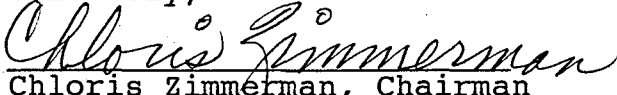
Dear Senator Knox and Committee Members:

As Chairperson of the Park County Planning Board, I am opposed to any amendments to the subdivision legislation passed in 1993. The proposed amendments are in many cases vague, and also undermine the purpose of the subdivision regulations which is to protect the public health, safety and welfare, protect the environment and assure that local taxpayers are not overburdened with costs that should go to the developer.

Section 76-3-608 (5) requires that the governing body justify all mitigation measures. If counties have to review mitigation measures and address the criteria under sub-section five, we also ask that extend the time limit for review of all subdivisions. Current time limits are not adequate for review of all the criteria required by these amendments. We would request 120 days for minor subdivisions and 180 days for major subdivisions.

I would request that you vote against any proposed amendments to the current law.

Sincerely,


Chloris Zimmerman, Chairman
Park County Planning Board

PARK COUNTY COMMISSIONERS

EXHIBIT 46

DATE 2-13-95

HB 473

414 E. Callender
Livingston, Montana 59047
406-222-6120

February 13, 1995

House Natural Resource Committee
Capital Station
Helena, MT 59620

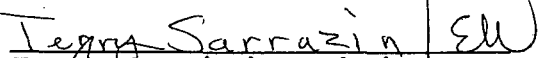
Dear Senator Knox and Committee Members:

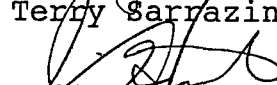
Park County Commissioners and other officials are concerned about any proposed amendments to the subdivision legislation passed in 1993. When the subdivision regulations were amended in 1993, local governments had to spend time and money rewriting their existing regulations, holding public hearings, and educating the public on the changes. If the regulations are again amended, local governments would have to again repeat the process. This amounts to an unfunded mandate from state government to local government. While we supported the 1993 amendments, we do not support repeating the process at this time. Park County spent an estimated \$3,000.00 revising subdivision regulations in 1993. County governments, as most government entities, are trying to live within I-105, and spending time and money on legislation that is not needed and in many cases only confuses current legislation, seems to us a waste of taxpayer dollars. If the subdivision laws are changed, we would request that the legislature also provide funding to local governments to finance changes in local regulations.

Under the current regulations neither the planning board nor the commissioners have had any trouble meeting time deadlines. However, Section 76-3-608 (5) requires that the governing body justify all mitigation measures. If counties have to review mitigation measures and address the criteria under sub-section five, we also ask that you extend the time limit for review of all subdivisions. Current time limits are not adequate for review of all the criteria required by these amendments. We would request 120 days for minor subdivisions and 180 days for major subdivisions.

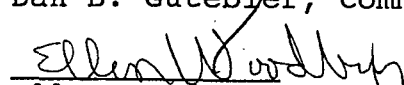
However, we wish to go on record as opposing any amendments to the current law at this time.

Sincerely,


Terry Sarrazin, Chairman


Jim Hunt, Commissioner


Dan B. Gutebier, Commissioner


Ellen Woodbury, Planning Director

Park County Attorney

EXHIBIT 47
DATE 2-13-95
HB 473

Tara DePuy

Jon M. Hesse Deputy

Kendra K. Anderson Deputy

414 East Callender — Livingston, MT 59047
Telephone: (406) 222-6120 ext. 239

February 13, 1995

House Natural Resource Committee
Capital Station
Helena, MT 59620

Dear Senator Knox and Committee Members:

As Park County Attorney, I am concerned about the vagueness of the language in some of the amendments to the Montana Subdivision and Platting Act. For example, section 76-3-603, subsections (2) and (3) remove specific criteria from the law and replace it with language such as "a summary of probable impacts and additional relevant and reasonable information". Section 76-3-608 subsection (5)(b) states that "whenever feasible", mitigation should be designed to provide some benefits for the subdivision. All of this language is open to litigation for definition as to what is reasonable, relevant, and feasible. I am concerned that the proposed amendments will result in additional court time and costs to local governments defining the intent of the law. It also adds to the uncertainty for the developer. We currently have twenty years of case law, much of which would have to be redefined if the law is amended as proposed.

I would request that you vote against any proposed amendments to the current law.

Sincerely,



Tara DePuy
Park County Attorney

EXHIBIT 48
DATE 2-13-95
HB 473

414 E. Callender
Livingston, Montana 59047
406-222-6120

K COUNTY COMMISSIONERS

February 13, 1995

House Natural Resource Committee
Capital Station
Helena, MT 59620

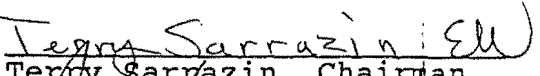
Dear Senator Knox and Committee Members:

Park County Commissioners and other officials are concerned about any proposed amendments to the subdivision legislation passed in 1993. When the subdivision regulations were amended in 1993, local governments had to spend time and money rewriting their existing regulations, holding public hearings, and educating the public on the changes. If the regulations are again amended, local governments would have to again repeat the process. This amounts to an unfunded mandate from state government to local government. While we supported the 1993 amendments, we do not support repeating the process at this time. Park County spent an estimated \$3,000.00 revising subdivision regulations in 1993. County governments, as most government entities, are trying to live within I-105, and spending time and money on legislation that is not needed and in many cases only confuses current legislation, seems to us a waste of taxpayer dollars. If the subdivision laws are changed, we would request that the legislature also provide funding to local governments to finance changes in local regulations.

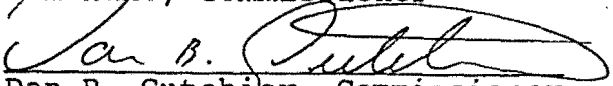
Under the current regulations neither the planning board nor the commissioners have had any trouble meeting time deadlines. However, Section 76-3-608 (5) requires that the governing body justify all mitigation measures. If counties have to review mitigation measures and address the criteria under sub-section five, we also ask that you extend the time limit for review of all subdivisions. Current time limits are not adequate for review of all the criteria required by these amendments. We would request 120 days for minor subdivisions and 180 days for major subdivisions.

However, we wish to go on record as opposing any amendments to the current law at this time.

Sincerely,


Terry Sarrazin, Chairman


Jim Hunt, Commissioner


Dan B. Gutebier, Commissioner


Ellen Woodbury, Planning Director

Planning Department
P. O. Box 278
Madison County
Virginia City, MT 59755

February 13, 1995

House Natural Resources Committee
Capital Station
Helena, MT 59620

Dear Representative Knox and Committee Members:

I am concerned about any proposed amendments to the subdivision legislation passed in 1993. When the subdivision regulations were amended in 1993, local governments had to spend time and money rewriting their existing regulations, holding public hearings, and educating the public on the changes. If the regulations are again amended, local governments would have to again repeat the process. This amounts to an unfunded mandate from state government to local government. While we supported the 1993 amendments, we do not support repeating the process at this time. County governments, as most government entities, are trying to live within I-105, and spending time and money on legislation that is not needed seems to us a waste of taxpayer dollars. I am also a part-time planner and do not have the time to be revising the subdivision regulations in addition to my regular duties. If the subdivision laws are changed, the legislature should also provide funding to local governments to finance changes in local regulations.

The current subdivision regulations have worked well in Madison County, and neither the planning board nor the commissioners have had any trouble meeting time deadlines? I would request that you vote against any proposed amendments in the current law.

Sincerely,



Valerie Counts
Planning Director

Park County Attorney

Tara DePuy

Jon M. Hesse Deputy

Kendra K. Anderson Deputy

414 East Callender — Livingston, MT 59047

Telephone: (406) 222-6120 ext. 239

February 13, 1995

House Natural Resource Committee
Capital Station
Helena, MT 59620

Dear Senator Knox and Committee Members:

As Park County Attorney, I am concerned about the vagueness of the language in some of the amendments to the Montana Subdivision and Platting Act. For example, section 76-3-603, subsections (2) and (3) remove specific criteria from the law and replace it with language such as "a summary of probable impacts and additional relevant and reasonable information". Section 76-3-608 subsection (5)(b) states that "whenever feasible", mitigation should be designed to provide some benefits for the subdivision. All of this language is open to litigation for definition as to what is reasonable, relevant, and feasible. I am concerned that the proposed amendments will result in additional court time and costs to local governments defining the intent of the law. It also adds to the uncertainty for the developer. We currently have twenty years of case law, much of which would have to be redefined if the law is amended as proposed.

I would request that you vote against any proposed amendments to the current law.

Sincerely,



Tara DePuy
Park County Attorney

EXHIBIT 49
DATE 2-13-95
HB 473

Planning Department
P. O. Box 278
Madison County
Virginia City, MT 59755

February 13, 1995

House Natural Resources Committee
Capital Station
Helena, MT 59620

Dear Representative Knox and Committee Members:

I am concerned about any proposed amendments to the subdivision legislation passed in 1993. When the subdivision regulations were amended in 1993, local governments had to spend time and money rewriting their existing regulations, holding public hearings, and educating the public on the changes. If the regulations are again amended, local governments would have to again repeat the process. This amounts to an unfunded mandate from state government to local government. While we supported the 1993 amendments, we do not support repeating the process at this time. County governments, as most government entities, are trying to live within I-105, and spending time and money on legislation that is not needed seems to us a waste of taxpayer dollars. I am also a part-time planner and do not have the time to be revising the subdivision regulations in addition to my regular duties. If the subdivision laws are changed, the legislature should also provide funding to local governments to finance changes in local regulations.

The current subdivision regulations have worked well in Madison County, and neither the planning board nor the commissioners have had any trouble meeting time deadlines? I would request that you vote against any proposed amendments in the current law.

Sincerely,



Valerie Counts
Planning Director



EXHIBIT 50
DATE 2-13-95
HB 473

City of Helena

February 13, 1995

Representative Dick Knox
House Natural Resources Committee

Dear Committee Members:

The 1993 Montana Legislature adopted extensive revisions to the Montana Subdivision and Platting Act. The law was revised after several years of work was completed with a wide range of various interest groups (including realtors, developers, local government, environmentalists, agricultural groups, etc.) to address concerns, and compromise was reached. After the law was adopted, each city and county developed and adopted new subdivision regulations to comply with the changes.

In the City of Helena, public hearings were held before the Planning Board and City Commission for a total cost of approximately \$2,000. The requirement to revise the City's subdivision regulations did not include funds to cover the costs that were borne by the City and its taxpayers. During the time needed to revise the regulations, other requests by citizens were put on hold.

Since October 1993 when the new local subdivision regulations were adopted, the City has reviewed and approved three major subdivisions creating 115 residential lots (including one major subdivision with 65 lots, which was initially denied and then resubmitted and approved with 60 lots for 69 dwelling units); one major subdivision for 220 units for rent; and eight minor subdivisions creating 23 lots.

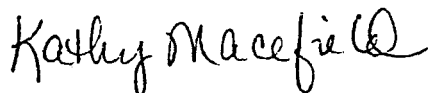
The City of Helena opposes HB 473 for the following reasons:

- 1) The revised subdivision regulations have not been in place long enough to determine if there are any problems, or what those problems might be.
- 2) Needlessly revising the subdivision regulations requires additional time that is not readily available. Helena, like many other Montana communities, is in a period of rapid growth and development. Revising regulations takes time away from other development projects and can result in unnecessary delay for developers.

- 3) Needlessly revising the subdivision regulations incurs additional expense that is not provided by the Legislature (i.e., an "unfunded mandate").
- 4) If changes are going to be made to the Subdivision and Platting Act, they should only be considered after there has been a discussion with the various groups that have an interest in those changes. This careful and considered discussion is important to avoid confusing language in the proposed legislation.
- 5) HB 473 severely limits the aspects the governing body may require to be considered with the environmental assessment by striking "such additional relevant and reasonable information as may be required by the governing body."
- 6) HB 473 has confusing language for mitigation considerations. In order to adequately address the mitigation measures, it may take more time than is presently provided by the subdivision review process (60 days for major subdivisions, 35 days for minor subdivisions).
- 7) HB 473 identifies the parties that are able to appeal a governing body's decision for a subdivision. As a technicality, how would a county or city commission sue itself for a decision it made? Yet, the public has been specifically excluded from that legal process.

For these reasons, the City of Helena asks you to not support HB 473.

Sincerely,



Kathy Macefield
Planning Director

**Mandeville
Agency
Inc.**

EXHIBIT

50

DATE

2-13-95

- Insurance -

- Real Estate -

Home & Auto

HR

473

Residential

Business, Farm & Ranch

Farm & Ranch

Life & Health

Commercial

February 10, 1995

House Natural Resources Committee
Capitol Station
Helena, MT 59620

RE: OPPOSE HB 473

Members of House Natural Resources Committee:

I am opposed to HB 473, changes to the Subdivision and Platting Act. Our community just went through a lengthy and expensive implementation process as a result of the 1994 changes. We are not interested in doing it again. The biennial tinkering with the Subdivision and Platting Act by the Legislature is a waste of limited local resources.

Our community cannot afford the additional liabilities and unfunded mandates contained in HB 473. I hope you will vote no on HB 473.

OPPOSE HB 473!

Sincerely,

COLUMBUS CITY-COUNTY PLANNING BOARD



WEBB C. MANDEVILLE
Chairman

WCM/tcl

IN COLUMBUS

130 S. Pratten
P. O. Box 69
Columbus, MT 59019
(406) 322-5361



IN ABSAROOKEE

Woodard Ave.
P. O. Box 385
Absarokee, MT 59001
(406) 328-4500

League of Women Voters of Montana



EXHIBIT 52
DATE 2-13-95
HB 473

WRITTEN TESTIMONY PRESENTED BY THE LEAGUE OF WOMEN VOTERS OF MONTANA

House Natural Resources Committee
3:00 p.m., Monday, February 13, 1995
House Bill 473 by Knox

Two years ago Montana's subdivision laws underwent a major revision, with the elimination of exemptions and loopholes under which most subdivision activity in the state for decades had escaped any meaningful review. HB 473 proposes few major changes, but rather tinkers with certain aspects of the current law. Unfortunately, in many instances this tinkering would reduce local discretion and would detail review criteria for vastly different local situations. Many of the changes proposed in this bill are well-intentioned, but largely unnecessary or ill-advised.

The proposed changes to the bonding requirements in Section 4 could weaken the governing body's ability to ensure that agreed upon improvements are actually carried out. The governing body already has discretion in structuring a bonding agreement or other reasonable security. This section attempts to unnecessarily micro-manage the decisions of the local government. Subsection 3 appears to attempt to settle a judicial question by legislative fiat.

Section 6, Subsections 4 and 5, would involve the local governing body in the design of mitigation measures for a proposed subdivision. The government's role would no longer be to identify problems with a proposed subdivision and communicate them to the developer, who could then address them and bring the proposal back. Now the local government would begin to take on the responsibility for redesigning a subdivision and proposing mitigation measures. We believe that the proper role of government should be to review subdivisions, not to redesign them.

Subsection 6 of the same section would exempt minor subdivisions from review for their effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health and safety, if the proposal is for an area where a master plan has been adopted. Yet the criteria laid out for a master plan are too minimal and vague to warrant the waiving of these important review criteria.

The proposed changes to the park dedication requirement are a mixed bag. It may make sense to have a sliding payment scale based on the size of the parcels being created, but it does not make sense to mandate the elimination from the park dedication requirement of land proposed for subdivision into parcels larger than 5 acres. Local governments should have the discretion, depending on local circumstances, to waive or not to waive the dedication for larger parcels. In some parts of the state a large volume of subdivision of land into parcels of 5 acres or more may warrant a park dedication requirement for such parcels.

The lack of funds for park maintenance is certainly a problem for many local jurisdictions. However, it is not clear that park dedication funds are the best source of support for maintenance. Park dedication monies are highly variable from year to year, depending on the

level of subdivision activity. And if local governments become dependent on park dedication funds for maintenance, the acquisition and development of parks may suffer. Proposed New Section 9 also details criteria for the development of parks. But with such diverse levels and patterns of development across Montana, such decisions would be better made at the local level.

Proposed New Section 10 reiterates rights to sue which already exist in law. This section also invites an appeal to district court of virtually any subdivision decision.

The League of Women Voters believes that, with the elimination of the major exemptions, the current subdivision laws provide a good framework for local government review of subdivisions. The current law strikes a good balance between state guidelines and local discretion. In the absence any pervasive statewide problems, we believe the legislature should refrain from tinkering with the subdivision laws as they now stand.

Thank you

Tonia Bloom, Legislative Corps., LWMT

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. HB 473DATE 2-18-95SPONSOR(S) Rep. Knapp

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
John Brandy	Stillwater Co.	#B473	✓	
Jim Richer	MT Assoc Realtors	473	✓	
Alan Rollo	MAAF	473	✓	
Willa Hall	LWV		✓	
J. Shontz	MT ASSOC REALTORS	473		✓
MIKE MURPHY	MT WATER RES ASSN			✓
W. James Kembel	City of Billings		✓	
Shenna Obri	Jeff. County	473	✓	
COLLIN DAVIS	MT. ASSOC REALTORS	473		✓
Ernie Dutton	MT ASSOC Realtors			✓
Nick Golder	NPRE	473	✓	
Blake Wandal	Lewis & Clark Co	473	✓	
Don Allen	MT. Wood Products Assn	473		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. 473
 DATE 2-13-95 SPONSOR(S) Rep. Furr

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Steve Manderville ^{Helena}	MT Assoc Realtors	473		X
David Owen	MT Chamber			X
Bob Stephens	Int. Grain Growers			X
Russ Rutter	Wash Corp			X
Bob Gilbert	SELF			X
Chris Racicot - Helena	Montana Building Industry	473		X
Bob Gilbert	Mont Fire Association District ASSN			X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. HB 473DATE 2-13-95 SPONSOR REP. KNOX

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Janet Ellis	MT Audubon	473	✓	
Andrew Epple	City of Bozeman Gallatin County		✓	
Ellen Woodbury	Park County		✓	
DON WILLIAMSON	CITY OF HAMILTON		✓	
Peggy Trenk	WETA			✓
ANDY SKINNER	SELF			✓
Harry Brown	Ag. Pres. Assoc.	473		✓
John Youngberg	MT. Farm Bureau	473		✓
Kathy Macfield	City of Helena		X	
ROBIN CRAWFORD	F.O.A.W.	473	X	
John Bloomquist	Mt. Stockpiles	473		X
Gordon Morris	MACO	473	X	
Deborah Smith	Sierra Club	473	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Dick Knox, on February 17, 1995, at
8:00 A.M.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HJR 25
Executive Action: HB 430 Tabled as amended
HB 473 Do Pass
HJR 22 Do Pass as amended
HB 521 Suspended
HB 538 Tabled
HJR 25 Do Pass

point Yellowstone County will be back on the same state standard as the rest of the state. There is nothing to prevent the next Legislature, that will be convening again before the bill takes affect, from addressing the need for exemptions in certain cases.

REP. HAL HARPER said all the bill does is establish a goal with the hope that someday there may be cleaner air in Billings and re-establish uniform state-wide standards. Both goals are laudable and make the bill worthy of support.

Vote: Question was called. Roll call vote was taken. **Substitute Do Not Pass** motion carried 11-7. **REP. RANEY, REP. ELLINGSON, REP. EWER, REP. FUCHS, REP. HARPER, REP. SWANSON** and **REP. STOVALL** voted no.

Motion/Vote: **REP. ORR** MOVED TO TABLE SB 430. SB 430 was Tabled as amended by same vote as DO Not Pass.

EXECUTIVE ACTION ON HB 473

CHAIRMAN KNOX turned the chair over to **VICE CHAIRMAN TASH** during executive action of HB 473.

Motion: **REP. DICK KNOX** MOVED HB 473 DO PASS.

Discussion: **REP. EMILY SWANSON** said she would like to separate the amendments to HB 473 into three parts, one through three, four through ten and eleven.

Motion: **REP. SWANSON** MOVED AMENDMENTS ONE THROUGH THREE TO HB 78 DO PASS.

Discussion: **REP. SWANSON** said the first three amendments explain the difference between a major subdivision and a minor subdivision. A minor subdivision is five lots or less. The bill eliminates a need for an environmental assessment for a minor subdivision. That isn't a good idea. The amendments put the need for an environmental assessment on a minor subdivision back into the bill.

REP. KNOX said he resisted the amendments. The bill has provisions that local governments can use to establish their own review criteria. The bill puts control into the hands of local governments and that is where it should be. The local governments can subject minor subdivisions to a very definite review process if they so choose.

REP. SWANSON said the bill puts the burden on the public instead of the subdivider having to show that the subdivision is not intruding on the public interest. The person that puts in a subdivision should be the one to try to fit with the community rather than the community trying to fit with the subdivider.

REP. KNOX said the governing bodies still have the preponderance of power. That section of the bill places a degree of credibility and accountability upon the governing bodies.

Vote: Question was called. Voice vote was taken. Motion failed 12-6.

Motion: REP. SWANSON MOVED AMENDMENTS FOUR THROUGH TEN DO PASS.

Discussion: REP. SWANSON said amendments four through ten change the way park dedication is calculated in a subdivision. Instead of doing it on fair market value it would be done on area.

REP. KNOX said he resisted amendments four through ten. The park dedication provision is fair and equitable. It is designed to meet specific needs in various types of subdivisions. When there are a greater amount of lots within a subdivision there is a maximum amount of park dedication. As more open space is created within a subdivision the park requirement drops. In the real world there are so-called parks all over Montana in subdivisions that are weed infested messes due to lack of maintenance. This bill provides for maintenance.

Tape 1, Side B.

Vote: Question was called. Voice vote was taken. Motion failed 12-6.

Motion: REP. SWANSON MOVED AMENDMENT 11 DO PASS.

Discussion: REP. SWANSON said Section 10 of the bill restricts the landowners who can appeal to landowners with a property boundary contiguous to the proposed subdivision. There are more people affected by a subdivision than the landowners adjacent to a particular piece of property. If there is a concern among the public they should have access to the appeal process without having to go to the government officials and convince them to do the appeal for them.

REP. KNOX said he resisted the amendment. He pointed out that currently people can sue if they suffer harm to their health, or if a subdivision obstructs free use of their property. Individuals have free access to their local governing bodies and they are very responsive to groups who have a legitimate cause.

REP. DANIEL FUCHS said he was against the amendment. He said it is important to recognize the way Section 10 is drafted because there are a lot of situations where there have been arbitrary and capricious actions on behalf of government.

REP. HARPER asked REP. KNOX if the wording in Section 10 meant that a person who owned property across the road from the subdivision wouldn't be able to appeal because their property

wouldn't be contiguous. REP. KNOX said that is his interpretation.

Vote: Question was called. Voice vote was taken. Motion failed 12-6.

Vote: Question was called. Voice vote was taken. Do Pass HB 473 motion carried 12-6. REP. HARPER, REP. SWANSON, REP. CARLEY TUSS, REP. BOB RANEY, REP. JON ELLINGSON AND REP. DAVID EWER voted no.

EXECUTIVE ACTION ON HJR 22

Motion: REP. BILL TASH MOVED HJR 22 DO PASS.

Motion: REP. TASH MOVED THE AMENDMENTS TO HJR 22

Discussion: REP. TASH explained that the amendments would adopt an administrative rule procedure to allow under the air quality statutes a minor change in the facility without a pre-construction permit.

REP. JON ELLINGSON asked if the current statutes permit the Department of Health and Environmental Sciences (DHES) to make these kinds of rules. Jan Sensibaugh, Air Quality Division, DHES, said the department does have the authority in the statute to develop the rules.

REP. ELLINGSON asked REP. TASH if the current rules of DHES require permitting now for the kind of minor modification that is being addressed in the resolution. REP. TASH replied yes.

REP. HAL HARPER asked Jan Sensibaugh if additional levels of the same type of pollutant were discharged would the plant be allowed to operate without an amended operating permit under the amendments. Ms. Sensibaugh said the department operates a pre-construction permit program and an operating permit program. The department would create a level in the rules allowing construction without getting a pre-construction permit as long as the level of pollutants stay below the level that is currently being emitted. The operating permit would have to be amended within a year to include the changes.

Vote: Question was called. Voice vote was taken. Motion Do Pass amendments carried 16 to 2. REP. ELLINGSON and REP. TUSS voted no.

Motion/Vote: REP. TASH MOVED HJR 22 DO PASS AS AMENDED. Question was called. Voice vote was taken. Motion carried 15 to 3. REP. RANEY, REP. ELLINGSON and REP. TUSS voted no.

Tape 2, Side A.

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 2-17-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 473 (first reading copy -- white) do pass.

Signed: _____

Dick Knox
Dick Knox, Chair

PS
Committee Vote:
Yes 12, No 6.

411126SC.Hbk

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 15, 1995,
at 3:30 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Mickhael Kakuk, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 472, HB 473,
Executive Action: SB 382

{Tape: 1; Side: B;}

HEARING ON HB 472

Opening Statement by Sponsor:

REPRESENTATIVE DICK KNOX, House District 93, Winifred, presented
HB 472. He handed out printed material, **EXHIBIT 1**. SB 346,
which was tabled last session, called for the sale of water for

{Tape: 1; Side: B}

SENATOR VIVIAN BROOKE, referring to the "objection" which is built into the bill, asked **Mr. Bloomquist** if he would envision that this objection could go to court?

Mr. Bloomquist stated a contested case hearing would be conducted under MEPA and could end up in court.

SENATOR BROOKE asked who would pay the court cost if the objector prevails?

Mr. Bloomquist stated there was no loser pay provision under that scenario. There was a lengthy discussion whether the loser, particularly at the agency level, should have to pay the other party as to costs and attorneys fees. The agricultural community was a little concerned with that because this would have a chilling effect on objections to these interests. Ranchers may not have a valid objection at first, but the right to object should be preserved. Many times a change application comes in on the last day to file an objection. An objection is then filed to preserve those rights and then they are able to go over the information involved.

SENATOR BROOKE asked **Mr. Lane** how long it took to determine the need for a fishery resource?

Mr. Lane stated their biologists usually have a pretty good idea of the streams which are having fisheries problems due to low water. They have summaries and opinions on most of the streams in the state. In their water leasing program, they already know critical streams and which streams would be good candidates for spawning purposes if they had more water on a regular basis.

Closing by Sponsor:

REPRESENTATIVE KNOX stated he believed the bill would work. This is a wide open process for a willing buyer and a willing seller. Where there is an established instream need and there are people or organizations which are interested in purchasing water and there is an existing water source there, these two parties have every opportunity to come to a meeting of the minds.

HEARING ON HB 473

Opening Statement by Sponsor:

REPRESENTATIVE DICK KNOX, House District 93, Winifred, presented HB 473. He stated there have been comments that HB 473 creates an unfunded mandate upon the cities and counties of Montana. He has not signed the fiscal note because it was based on an erroneous assumption that the costs associated with implementing

it would be the same as the cost of implementation of the first major subdivision revision law in Montana. This bill can be implemented by simply adding to the existing regulations. The cost will be less than 50% of the cost on the fiscal note. The first substantive change in language was on page 2, line 15, which stated that the purpose of this bill is to protect the rights of property owners.

In the review process the local government will consider the rights of adjacent land owners. Page 2, line 28, provides for the "gift" of land by an owner to their heirs. The gift must be accompanied by an agricultural covenant. The land must continue to be used for agricultural purposes. This will allow orderly transfer of land from landowners to their descendants. Section 4 requires that developers complete improvements within a subdivision before approval of the final plat. In the event that bonding is used to provide security for improvements, this section modifies the bonding requirements by requiring the reduction of bonding and as improvements are completed, and permitting alternate guarantee plans for projects finished in phases. This section will assure that improvements are completed while keeping development costs in sync with revenue flows.

Proponents' Testimony:

REPRESENTATIVE DAN MCGEE, House District 21, Billings, commented that this bill completes the process which was begun last session. Both HB 408 and HB 280 were passed out of the House and into the Senate. Both bills addressed the issue of rampant development in the state of Montana. HB 408 did absolutely nothing about the other side of the issue which was the subjective interpretation of the law by local governments, planning boards, etc. HB 280 was intended to put some teeth in the other side of the law; however, it did not pass. What we have now is a situation where landowners have had their rights taken away by subjective interpretation of the law by local governments. This bill will put back into statute the ability of a property owner to take to task arbitrary and capricious decisions on the part of local government. The opponents will say that is an unfunded mandate. That is not true. In the county that he has worked in during the last two years, they amended their regulations three times. The opponents will also state that they will be in jeopardy because the bill specifically states that they can be taken to task. If you are the landowner who is trying to do something with your property, it is only right and proper that if someone adjudicates that you cannot do so, you have a right to question that through the judicial process.

William Spilker, Montana Association of Realtors, stated that last session a subdivision bill was passed which contained major changes to the subdivision bill. Basically, that bill was a

compromise which eliminated the 20 acre definition, eliminated most of the exemptions, and, on the other hand, eliminated public interest criteria and the basis of need as a criteria for review. Unfortunately that bill failed to include the additional features which would provide streamlined review for minor subdivisions, make local governments more accountable for their actions and bring some reason to this process. This bill addresses these issues. He referred to the ability of a subdivider, adjacent property owner, municipality or a county to bring an action against a governing body on their decision regarding a preliminary plat. This action can be brought on the basis of arbitrary or capricious acts or for acts that exceed lawful authority. **Mr. Spilker** predicted that there will be testimony that requests that this right to bring the action should be extended to any person. He urged the committee to ignore this on the basis of preventing frivolous lawsuits. The last legislature removed public interest as a criteria for review under this bill.

{Tape: 2; Side: A}

Jerry Hamlin urged passage of HB 472 because of the private property rights protection which the bill affords and also the appeal process which would make local governments more accountable for their decisions. He presented written testimony from Erin Melugin, **EXHIBIT 7**. He presented an example of a three lot minor subdivision process. His secretary asked him if he thought it would be a good idea to buy a 20 acre parcel of ground and possibly subdivide it into three parcels so her house would be more affordable. The covenants defined that it could be divided four times. The county government had already approved the process. All the property owners adjacent to it knew when they bought their land that the property could be divided up to four times. He has been in the building and land development business for over 25 years.

Mr. Hamlin stated that the denial of this subdivision request was the most flagrant abuse of discretion by a county commission which he has ever seen. One of the reasons for denial was that it did not conform with the comprehensive plan which is not to be used as a regulatory document. The attorney in Jefferson County at the time, stated that it was also a flagrant abuse of county commissioners' discretion. The part of this bill which addresses an appeal process is extremely important. In Montana, we are developing very rapidly. The cost of moving here is escalating rapidly because the prices of lots are escalating rapidly which is a direct result of supply and demand. Many Montanans are being priced out of the ability to be able to live in Montana. This kind of legislation will stop that pendulum from swinging too far.

The seven reasons for denial of this particular subdivision were:
(1) The proposed subdivision was in conflict with the Lewis and Clark County Comprehensive Planning Board's plan to provide for

efficient delivery of public services. Prior to the subdivision application, a new fire department was installed in the area. A school bus route already existed in the area. It is served by one of the interstate highways. (2) The proposed subdivision was in conflict with the Lewis and Clark County Comprehensive Plan goal to encourage development within preferred development areas, and approval of this proposal would encourage premature subdivision within the area and encourage leapfrog development. He researched what the Lewis and Clark Comprehensive Plan goal was and the preferred development area ended up being any area within a one mile radius of the city of Helena. This would mean that any development outside of one mile of Helena is not good and therefore would serve as reason for denial of a subdivision. (3) The proposed density of development in the plan is a departure from the current pattern of development and it alleges that property in the immediate area is divided into tracts of 20 acres or greater. However, seventeen parcels within 1100 feet of this proposal were 5 acres and more. (4) The proposed subdivision, when developed, would have an immediate long lasting impact upon the scenic values of the surrounding landscape. If impact on scenic values is a criteria for denial of a subdivision, everyone could be denied. On the other hand, the landscape could be increased and enhanced by the construction of a beautiful new home. It would not have to impact the scenic values negatively. (5) Wildlife values, in particular mule deer and elk winter ranges associated with south and easterly facing slopes, would be negatively impacted. The proposed existing development activities also would exacerbate the cumulative loss of wildlife habitat. (6) Development of the proposed subdivision would enlarge the residential wildlife interface. (7) While the proposal would create only two additional parcels and for the most part the direct adverse effect would be minor if looked at individually, these adverse effects could be mitigated by certain restrictions and improvements in most cases. The commissioners based their denial of the subdivision on density. Density is not a legitimate reason for denial of a subdivision request.

Daniel Brien, Montana Association of Registered Land Surveyors, stated that they believe the changes in the park dedication or cash in lieu of, is long overdue. The ability to seek a just course of action for denial of a subdivision application is long overdue. This protects the property rights of the property owner. He presented written testimony, **EXHIBIT 8.**

Rick Gustine, Survco Surveying, Inc., presented his written testimony in support of HB 473, **EXHIBIT 9.** He asked for an amendment which would remove any park requirement or cash-in-lieu thereof for minor subdivisions.

Collin Bangs, Montana Association of Realtors, stated he spoke to this committee earlier on SB 331 regarding the housing affordability problems. This bill can help by keeping the housing prices from going up another 90% in the next six years. Sections 5 and 6 are very important because they now have to

review every subdivision of any land through these sections. This needs to be more workable. To divide a ten acre piece of land into two five acre pieces, the process needed will cost approximately \$3,000 and six months to accomplish. He presented his written testimony, **EXHIBIT 10**.

Warren Latvala, a Professional Land Surveyor, stated that this legislation and protection of property rights accomplishes what a good surveyor does when surveying and that is to survey both sides of the property line. This bill protects the people on both sides of the property line, not just the developer but the adjacent owner as well. He has had numerous experiences of landowners who wish to divide their property being completely handcuffed by a planning board referring to subjective portions of the current rules. He has personally experienced a bad situation as a neighbor where a subdivision was allowed where there was a violation of the objective portions. This would include things like providing legal and physical access, properly preparing the plat, etc. He asked his county commissioners to vacate a plat which was filed in violation of five county regulations and each violation was also a violation of state law. Since there is no provision for appeal as an aggrieved landowner, he has no way to appeal this other than through the courts.

Peggy Trenk, Western Environmental Trade Association, Montana Chamber of Commerce, stated their support of HB 473 primarily because of the recognition of property rights.

Bob Marks stated he firmly believed that standards need to be set and followed by the developer as well as the people reviewing developments. He wanted to emphasize the importance of Section 10 which provides for judicial review on subjective decisions.

Pete Story stated his support of HB 473.

John Bloomquist, Montana Stockgrowers Association, pointed out two provisions which they support wholeheartedly. One was found in Section 3, the provision on "gifting" of lands for agricultural purposes. The other was in Section 6, the consideration of agricultural water user facilities.

Larry Brown, Agricultural Preservation Association, stated their support of HB 473.

Opponents' Testimony:

Gordon Morris, Director of Montana Association of Counties, stated they were primary supporters of the legislation in the 93 session which was referenced earlier. They spent the interim prior to 1993 working on that legislation and were pleased when it passed. In September of 1994 they surveyed the membership relative to the subdivision law which was passed in 93 specific to the question of problems they had identified, complaints in regard to existing law and advice for preparing legislation for

this session. From a local government perspective, they did not find any problems in the existing law which needed to be addressed in this session. More recently they surveyed counties and planning departments across the state of Montana, **EXHIBIT 13**. They had 902 processed applications for subdivisions. Of those, 873 had been approved. They have an expedited review process. This bill would complicate expedited review. Section 2 of the bill simply deals with common sense. No one is looking to deny the rights of property owners. The entire subdivision process is a property rights issue. They are looking to protect property rights and not to deny property rights.

Mr. Morris stated that Section 4 of the bill, line 27, fails to recognize the bond referred to is a faithful performance bond in terms of making sure that the improvements are installed consistent with the subdivision proposal which has already been approved. That bond would be held by local government officials until such time as the project itself has been completed and time has elapsed to put them in the position to be comfortable to assume that there are no problems in the installation of the improvements. This bill fails to take into account the current need for ensuring that if there are immediate repairs necessary to a recently completed infrastructure project, there will be money available. That is the purpose of the bonds. They cannot reduce it commensurate with the successful completion of a project. They will hold it until the end. Section 5, line 10, states that an environmental assessment must accompany major subdivisions. Minors are already excluded. This section is not needed. On Section 6, line 12, the language which states "based on substantial credible evidence. . ." establishes an almost impossible burden of proof.

Mr. Morris added that the fiscal note states that Section 6 of the proposed legislation causes confusion in implementing the legislation. Referring to Section 8, he stated that when they go through the review process for subdivisions they make assurances that capital facilities will be anticipated and paid for. That section is unneeded. Section 9 is interesting in that this bill proposes to repeal 76-3-606 and 607, which are the existing parks set aside provisions. This would establish a new procedure entirely replacing the one in existing law. The current law is working and should not be changed.

The proposed system is so complicated that in many cases it would end up being litigated. Referring to Section 10, he stated there is a recent court case in Lewis and Clark County which ruled that notwithstanding the City of Kalispell case, an aggrieved person may obtain judicial review of subdivision decisions by means of a writ of review. Property owners can go to court and have an opportunity for judicial review at any stage of the process, thus Section 10 is also unneeded. This section invites litigation.

Blake Wordal, Lewis and Clark County Commissioner, reminded the committee of the language of SB 301 which states that the state

shall not mandate or assign any new expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision. That is an enormous political statement by this legislature which transcends partisan politics and political philosophies that are very important to local government. The fiscal note to this bill objectively surveyed cities and counties about the costs of reviewing the regulatory processes which they have. The fiscal note came up with a cost of \$348,000. This is an unfunded mandate.

Jane Jelinski, President of Montana Association of Counties, spoke in opposition to the bill because it is an unfunded mandate to every city and county in this state. She presented her written testimony, **EXHIBIT 11.**

Kris Dunn, Gallatin County Commission Chair, presented her written testimony, **EXHIBIT 12.** Section 10 caused confusion. She said that one way to the statute was that, "The county commissioners of the county where the subdivision is proposed who are aggrieved by a decision of the governing body to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located." The county commissioners in Gallatin County would not be appealing to the district court for a decision which they had made themselves.

Susan Abell, Flathead County Park Board, stated the problem she had with HB 473 was found in the New Section 9. Approximately five years ago the Flathead County Park Board conducted an intensive study as to what lands and money they had and what was needed in Flathead County. They found that in the early 70's, during rampant subdivision development, their commissioners had approved all of the subdivisions with land dedications for parks instead of cash-in-lieu of land. They found this land to be rocky cliffs, swampland, and triangular shapes of land surrounded by private roads which were absolutely unusable for county parks. They then tried to sell the lands. Most of them were purchased by adjoining land owners only to make their lands larger in size. As a result, they have the money discussed earlier. Their problem is with the word "maintenance" on line 18. Their board felt that with the population increase in the Flathead, they needed large acreages of land to help promote the recreational complexes which are needed for baseball, soccer, exercise trails, etc. They need to use the dollars which they have accumulated to acquire and develop larger parklands, not for maintenance. Perhaps they can compromise by limiting the dollars allowed for maintenance on a percentage basis.

Bob Norwood, Flathead County Parks and Recreation Superintendent, stated he has been involved with county parks in the Flathead for four years. He is opposed to Section 9 of this bill. By allowing these dollars to be used for maintenance, an

unfunded mandate is created. When a subdivision gives him \$700 to develop a park and the \$700 is spent, what money would he use to maintain that site? He can't take it from another site 20 miles away.

David Hull, City of Helena, presented his written testimony, **EXHIBIT 13**. The fiscal note shows an unfunded mandate which the local governments will have to come up with. This bill has eliminated the legislative immunity of local government. This has a chilling effect on anyone who wants to be a part-time city commissioner or county commissioner. It will be difficult getting people to fill those positions if their personal property is at stake. This bill will increase litigation.

Don Spivey, Whitefish City/County Planning Board, Kalispell City/County Planning Board, Flathead County Planning Board, stated that by law the time frame for approval of major subdivisions is 60 days. The time frame for a minor subdivision is 35 days. For a period of time before the application is accepted, the applicant spends time with the planning staff to resolve differences before it comes to a public hearing. After the application is complete, the clock starts running. Thirty days later this arrives at the planning board. After the planning board holds a public hearing, they then take all of the conditions which have been applied and deal with them individually and ask the developer if he has problems with any of them. Any problem issue is dealt with and there is an attempt to resolve the situation to everyone's satisfaction. It then would go to the city council or the county commissioners who have another public hearing. Those same issues are dealt with in that forum. During that entire period of time, there are endless numbers of working sessions with the developer. This all happens within a 60 day window. The new legislation is working. This bill is not needed. He presented written testimony, **EXHIBIT 14**.

Jim Nugent, City Attorney of Missoula, presented written testimony, **EXHIBIT 15**. They have a concern with Section 10. Zoning density must be looked at in subdivision review. Any denial would involve expenses and costs. The subdividers are authorized to sue, but the owner isn't. Many times the subdivider does not own the land. He may have the land on a contingency. Why would a municipality want to sue? What is fair market value and how will it be determined? There are many unfunded mandate requirements in this bill.

Nancy McLane presented her written testimony, **EXHIBIT 16**.

Susan Norton presented her written testimony, **EXHIBIT 17**.

Roger Nerlin presented his written testimony, **EXHIBIT 18**.

Richard Idler presented his written testimony, **EXHIBIT 19**.

Don Williamson, presented his written testimony, **EXHIBIT 20**. He stated this bill contains a lot of vague and confusing language. Litigation will be increased by this bill. The cost of litigation will be borne by the citizens out of the General Fund. That will take money away from other programs.

Gretchen Olheiser, Montana Preservation Alliance, presented her written testimony, **EXHIBIT 21**.

Glenna Obie, Jefferson County Commissioner, presented her written testimony, **EXHIBIT 22**. She represents a rural county which is the fourth fastest growing county in Montana. They do not have a planner on staff. This legislation would make that necessary.

Kelly Flaherty presented her written testimony, **EXHIBIT 23**.

Kerwin Jensen, Montana Association of Planners, stated their opposition to HB 473.

Chris Imhoff, League of Women Voters in Montana, presented her written testimony in opposition to HB 473, **EXHIBIT 24**.

Kathy Macefield, Planning Director for the City of Helena, presented her written testimony on behalf of the Helena City Commission stating their opposition to HB 473, **EXHIBIT 25**.

Paul Spengler, Lewis and Clark County Disaster and Emergency Services Coordinator, submitted written testimony. **EXHIBIT 26**.

Janet Ellis, Montana Audubon Legislative Fund, presented her written testimony in opposition to HB 473, **EXHIBIT 27**.

Jim Emerson stated his opposition to HB 473.

Katharine Brown presented her written testimony, **EXHIBIT 28**.

Park County Commissioners stated their opposition to HB 473 in written testimonies. **EXHIBIT 29 through 29-Y**.

Questions From Committee Members and Responses:

SENATOR JEFF WELDON asked **REPRESENTATIVE MCGEE** what he meant when he stated that HB 280 did not get its just due last session?

REPRESENTATIVE MCGEE stated that he was informed at the break last session that the Senate Natural Resources Committee Chairman had already determined that HB 408 would pass out of committee unamended and be signed by the Governor the first week of April. That is exactly what happened.

SENATOR WELDON stated the deliberations over the bill in the session happened long and late in the Senate and they spent a good deal of time on both bills.

SENATOR WELDON asked **REPRESENTATIVE KNOX** how they could rationalize the cost of the fiscal note given the high success rate of the current subdivision law.

REPRESENTATIVE KNOX stated this was the first time he had heard of a 97% success rate.

SENATOR WELDON asked what a "tract of record" was and how small it could be?

Commissioner Jelinski replied it is a legal division of land which could be any size. The issue she was raising in terms of requiring an environmental assessment is that currently they do not require an environmental assessment for the first minor subdivision of five lots or fewer. They do have the discretion, however, if the developer is doing another minor subdivision. They can look into the history to see if there is an attempt to evade or go around the standards.

SENATOR WELDON summarized that there could be a fairly large tract of record and a series of minor subdivisions over a half dozen years. None of the subdivisions would then require an environmental assessment. In essence, this would open a loophole large enough for a truck to drive through.

SENATOR CHRIS CHRISTIAENS asked **Commissioner Obie** what this bill would require of a part-time unpaid planning staff? Also, he asked about the need for them to hire a planner?

Commissioner Obie stated they contract for a planner. They will need to go through the process of review of their subdivision regulations again. This will require significant time on both the part of their contract planner and the volunteer planning board. In addition, there are new obligations on the county which may result in the hiring of a part-time to full time county planner.

SENATOR CHRISTIAENS asked **Ms. Abell** the same question.

Ms. Abell stated she was not on the planning board. She is on the parks and recreation board. Her testimony was in relationship to the maintenance of the cash-in-lieu of dollars. In that respect, it will cost them quite a bit.

SENATOR CHRISTIAENS asked what the benefits would be for the subdivider?

Mr. Bangs stated that current law does state that cities and counties can require mitigation. They now have conditions of approval. They state that the plat will be approved if the landowner meets the following conditions. This bill will clarify in law that they may decide what conditions need to be met; however, they will also need to justify the reasons for the request. In Missoula County a subdivision was approved with the

condition that every cat wore two bells. At present time, local government can list any conditions they choose without justifying the reason for the conditions.

SENATOR VIVIAN BROOKE asked **Commissioner Jelinski** if Gallatin County had a comprehensive plan and, if so, was it used when they reviewed subdivisions?

Commissioner Jelinski stated that they had a comprehensive plan; however, a master plan is not a regulatory document. It sets out goals, objectives and tasks for the planning board. It is a statement to the public that is the way they would like the county to develop in the future. In order to effectively regulate, they must use the zoning ordinance which accompanies the master plan. The Supreme Court has stated that a zoning ordinance must be substantially consistent with the master plan.

SENATOR BROOKE, referring to actions against governing bodies in Section 10, asked how she envisioned that working within the county government structure?

Commissioner Jelinski replied that there is no question that litigation is very costly. Their county is growing rapidly so there is a lot of tension and opposition to growth. The tension between the opposing forces is very much felt at the county commission and planning board level. It is possible that they could be sued by both sides. They have not had a lot of litigation in their county because they have worked very hard to make sure that they are not arbitrary and capricious and to mitigate the effects of growth with conditional approval. Damages caused by a final action would take away legislative immunity. There is an extreme risk for private citizens. Another problem involved in this section is defining who may sue and leaving out the person who lives across the street from the development.

SENATOR BROOKE stated that if this bill passed, the counties would have to go through rule changes. She asked how that was accomplished?

Commissioner Jelinski stated that first of all they would have to go through their regulations very carefully to see if they are compatible with the new legislation. Changes will need to be made to make them compatible with the law. Public hearings will then need to be scheduled. The planning boards and the elected officials will then need to be trained on what is included in the new regulations. There are other unfunded mandates in this bill. The administrative process of bonding will involve a staff person to handle the bonds, investments, withdrawals, mailings, and tracking.

Closing by Sponsor:

REPRESENTATIVE KNOX stated this bill establishes accountability for the planners. Section 4 is commonly used procedure. The goal of Section 5 is to place a greater degree of control at the local level. **SENATOR WELDON** had a concern that Section 5 would bypass the review process for minor subdivisions. However, there is a great deal of comprehensive criteria which has been formulated to fit local needs for any local governing body in the state of Montana. There is no question that there can and will be review of minor subdivisions. On the mitigation portion, substantial credible evidence is a common legal standard which has been used in over 800 cases statewide.

Mr. Morris stated that Section 3 was not needed because a gift is already covered. A gift to an immediate family member is covered but this is inadequate for agricultural estate planning. Only the first minor of a subdivision is excluded. **Mr. Morris** also stated that Section 10 was not needed because many district court cases state that there is the option of appeal. The Supreme Court is final and they have decided in Sourdough, "The legislature did not provide an appeal process under this act or cases involved in decisions of conditional approval of preliminary plats, accordingly this court will not fabricate one." He rejected the comments that this is an unfunded mandate. There will be some additional costs to local governments; however, it will not be excessive.

Susan Abell stated a legitimate problem. He has prepared an amendment which he will give to the committee addressing the problem. A statement had been made that maintenance of parks would be an unfunded mandate. He felt this was a stretch of logic. The fair market value could be decided by appraisers using recent sale price of like property. HB 473 adds the protection of the rights of property owners to the statement of purpose. It allows a gift of lands which allows the landowner to mitigate the impact of gift and estate taxes on the next generation. It improves bonding provisions and places in statute commonly used incremental bonding practices. It will give local governments greater flexibility to establish rules for minor subdivisions. It improves mitigation procedures. It allows money dedicated for parks to be used for maintenance thus addressing the statewide problem of neglected, weed infested parks. HB 473 addresses the problems created by a Supreme Court decision in reference to appeals.

EXECUTIVE ACTION ON SB 382

Motion: **SENATOR KEATING** MOVED TO AMEND SB 382.

Discussion: **Leo Berry** explained the amendments to the committee members, as contained in **EXHIBIT 30**

Bob Robinson, Director of Montana Department of Health and Environmental Sciences, presented a summary of fiscal concerns.

11

DATE 3-15-95

SEN

SEN:1995
wp.rollcall.man
CS-09

PRESIDENT
DANIEL P. BRIEN
P.O. Box 225
SOMERS, MT 59932
406 - 857-3563 (0) (Fax)

VICE-PRESIDENT
LINDA S. SMITH
1935 3RD AVE. EAST
KALISPELL, MT 59901
406 - 755-5369
406 - 758-5393 (Fax)



SENATE NATURAL RESOURCES

EXHIBIT NO. 8

DATE 3-15-95

BILL NO. HB-478

PRESIDENT-ELECT
WARREN P. LATVALA
RTE 85 Box 4244
LIVINGSTON, MT 59047
406 - 686-4452 (0) (Fax)

SECRETARY-TREASURER
ROBERT R. GUSTINE
P.O. Box 3727
BOZEMAN, MT 59729
406 - 587-5407
406 - 587-5408 (Fax)

P.O. Box 359
COLUMBIA FALLS, MT 59912

March 15, 1995

Senate Natural Resources Committee / Room 405

Re: Hearing on HB 473 at 3:00pm on Wednesday, March 15, 1995

Dear Committee Chairman Senator Lorents Grosfield, and members:

The Montana Association of Registered Land Surveyors, MARLS, supports this bill. We would request you considering the following changes:

Under the new section on park dedication requirement, page 7 line 7, where it states "A park dedication *may* not be required for: (a) land proposed for subdivision into parcels larger than 5 acres;..." we request the *may* be changed to *shall*. Some of the governing bodies I deal with consider when lots are 5 acres or greater in size there is no need for park lands for recreation purposes. After all, almost 5 football fields would fit into this size parcel, large enough for your own "park" on site. But there are others, that are requiring cash-in-lieu of park lands on lots greater than 5 and even to 10 acres in size. I've enclosed 4 examples of plats with varying lots and sizes. On the backs of each plat is the governing bodies requirement for cash-in-lieu of park lands.

The first two plats have all lots greater than 5 acres in size. The requirement for cash-in-lieu of park lands totals \$11,929 for 9 lots. Or \$1325 per lot. These are for lots that would fit from 5 to 10 football fields inside each parcel! The second two plats have all lots smaller than 5 acres in size. The requirement for cash-in-lieu of park lands totals \$7,556 for 8 lots. Or \$945 per lot. In light of the newly revised subdivision law of 1993, subdivisions now include lots up to 160 acres in size. This word *may* gives the governing bodies the option to require park lands or cash-in-lieu, at their whims, up to this 160 acre size. Please consider changing this to a *shall*.

EXHIBIT NO. 6 - 3/15/95
THE ORIGINAL OF THIS DOCUMENT
IS STORED AT THE HIST.SOCIETY AT
225 N.ROBERTS, HELENA MT 59620-1201
PHONE NO.444-2694

SENATE NATURAL RESOURCES

REPORT NO. 7

DATE 3-15-95

FILE NO. HB-473

Dear Committee Members;

Three years ago we started looking for a parcel of land to build a home on.

About two and a half years ago we found a parcel. It was slightly over 20 acres. It was more than we could afford, but the covenants allowed for division of the land up to four times.

After careful consideration of the impact subdividing may have and consulting with a builder, we decided to subdivide the parcel into three lots, two 5 acre lots and one lot slightly over 10 acres in size.

Almost two years ago we began the "subdivision process". We met all of the county's criteria, and in doing so spent about \$1,800.00. We wrote additional covenants which cared and provided for wildlife concerns and visual mitigation of the homes as well as filing a noxious weed control plan. We were then told our subdivision request would go before the County Commissioners at a scheduled Tuesday meeting.

Late on Saturday before the Tuesday meeting we received our mail containing the "report" by the Planning Staff. It was negative and recommended denial of our subdivision.

The county had given us one working day to combat the contents of their report. There was no one to contact regarding the report on Saturday or Sunday. Monday was a hectic work day.

It was suggested to us that we may not be attending a meeting as stated in our letter but rather a hearing. When we called to confirm which it would be, it was confirmed to us it was a meeting, not a hearing. Never the less, we tried to fit in as many inquisitive phone calls as possible Monday. We worked until 11:30 Monday evening trying to put some sort of a letter together for the County Commissioners in hopes they'd take it into consideration. It seemed to be our only hope.

At the discretion of the Commission, the meeting turned into a hearing. Our subdivision was denied. The denial was unlawfully based on density.

It took us, with the help of friends, in excess of three weeks to research most of the Planning Staff Report. It contained, in all reality, one falsehood and one lie after another.

We had been given an unlawful decision of denial and we had been lied to. And we had no rights to protect ourselves. There was no appeal process available.

When a legal avenue called a writ of review was found, we chose to pursue it, it did not give us the opportunity to introduce new evidence but was our last hope, and was a moral obligation to others. With the financial backing of several, we filed suit against the county. The case cost in excess of \$25,000.00.

We won the case. The county attorney and commissioners said they didn't read the decision that way.

On two separate occasions since the courts decision, we have requested another hearing before the board. Our last letter was over a month and a half ago. They still have not answered us.

It appears the Board of County Commissioners' feel they have more power than our judicial system.

We need to correct the injustices that are a part of our current subdivision laws. We need the right to defend ourselves when our government acts unlawfully. We need Private Property Rights, not to misuse or abuse our land or environment, but to have the rights to our own land, as it was promised to us.

HB 473 is the first step in the right direction to correct an arbitrary and often capricious subdivision review process. It will give innocent people like us, an appeals process. It will help protect private property rights.

We Urge your passage of HB 473

Sincerely,



Mike and Erin Melugin
129 Hauser Boulevard
Helena, Montana 59601 (406)-443-1971

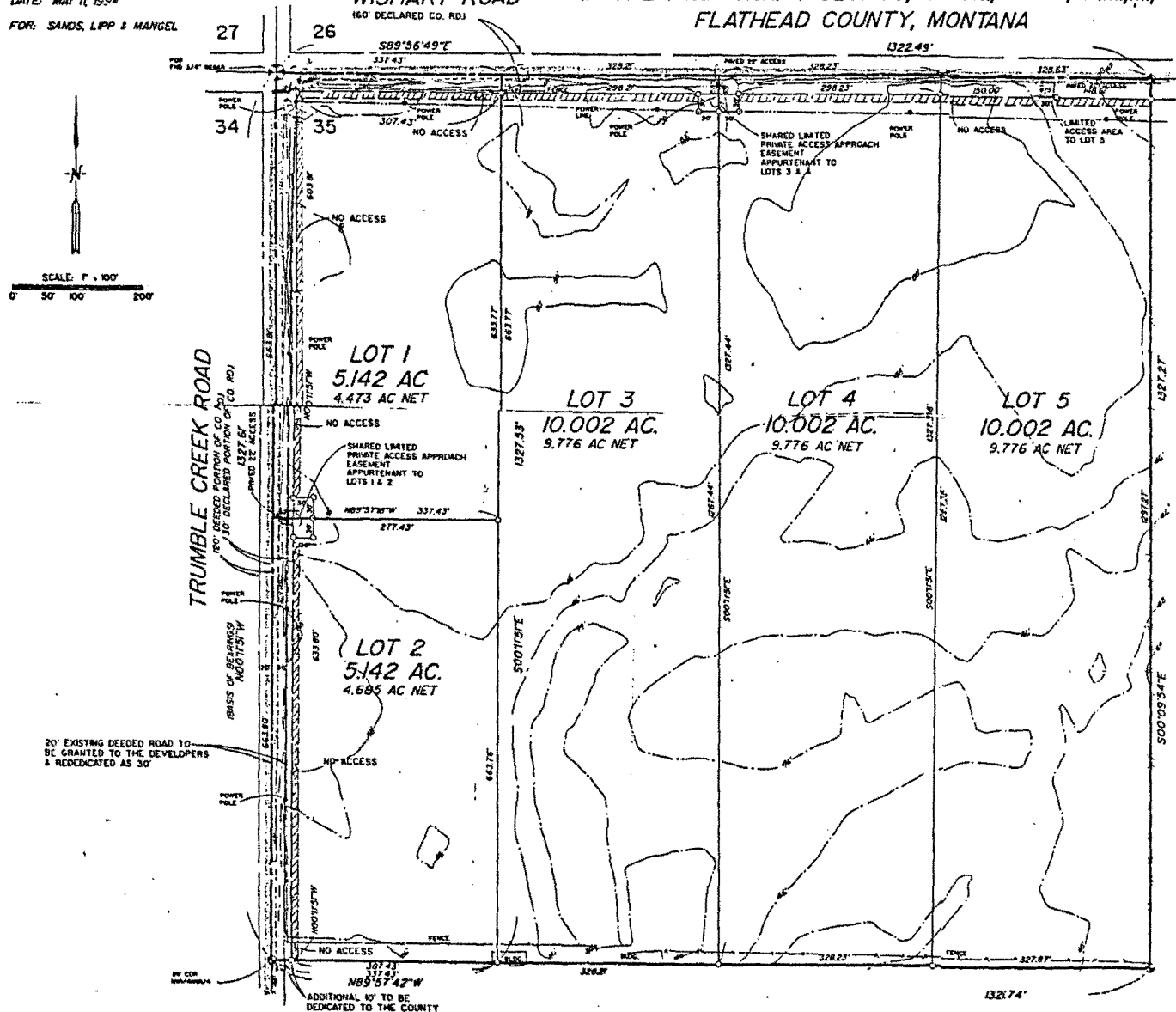
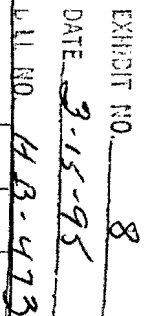
JOB NO: 30203
DATE: MAY 11, 1954
FOR: SANDS, LIPP & MANGEL

IN THE NW1/4NW1/4 SEC. 35, T.30N., R.21W., P.M.M.,
FLATHEAD COUNTY, MONTANA

A TRACT OF LAND, SITUATED, LIEING, AND BEING IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 30 NORTH, RANGE 21 WEST, P. M. L., PLATEAU COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

THE NORTHEAST QUARTER IN THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 30 NORTH, RANGE 21 WEST, P. M. L., PLATEAU COUNTY, MONTANA, AND CONTAINING 80 ACRES ALTOGETHER, BEING THE SAME AS THE TRACT OF LAND IN THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 30 NORTH, RANGE 21 WEST, P. M. L., PLATEAU COUNTY, MONTANA, AND CONTAINING 80 ACRES, AS SHOWN AND DESIGNATED BY THE ABOVE DESCRIBED TRACT OF LAND SHALL HEREAFTER BE KNOWN AND DESIGNATED AS, 119

LOTS (5) NET	38.486 AC.
ROADS	1.804 AC.



NE $\frac{1}{4}$ SE $\frac{1}{4}$ SEC. 17, T.28N., R.22W., P.M.M., FLATHEAD CO.

FROM THE OFFICE OF : HERSMAN LAND :
P.O. BOX 225
SOMERS, MT 59
(406) 857-3563

FOR : GOLDEN MEADOW
MONTANA DREAM
DATE : DECEMBER 23, 15
PURPOSE : PRELIMINARY PL.

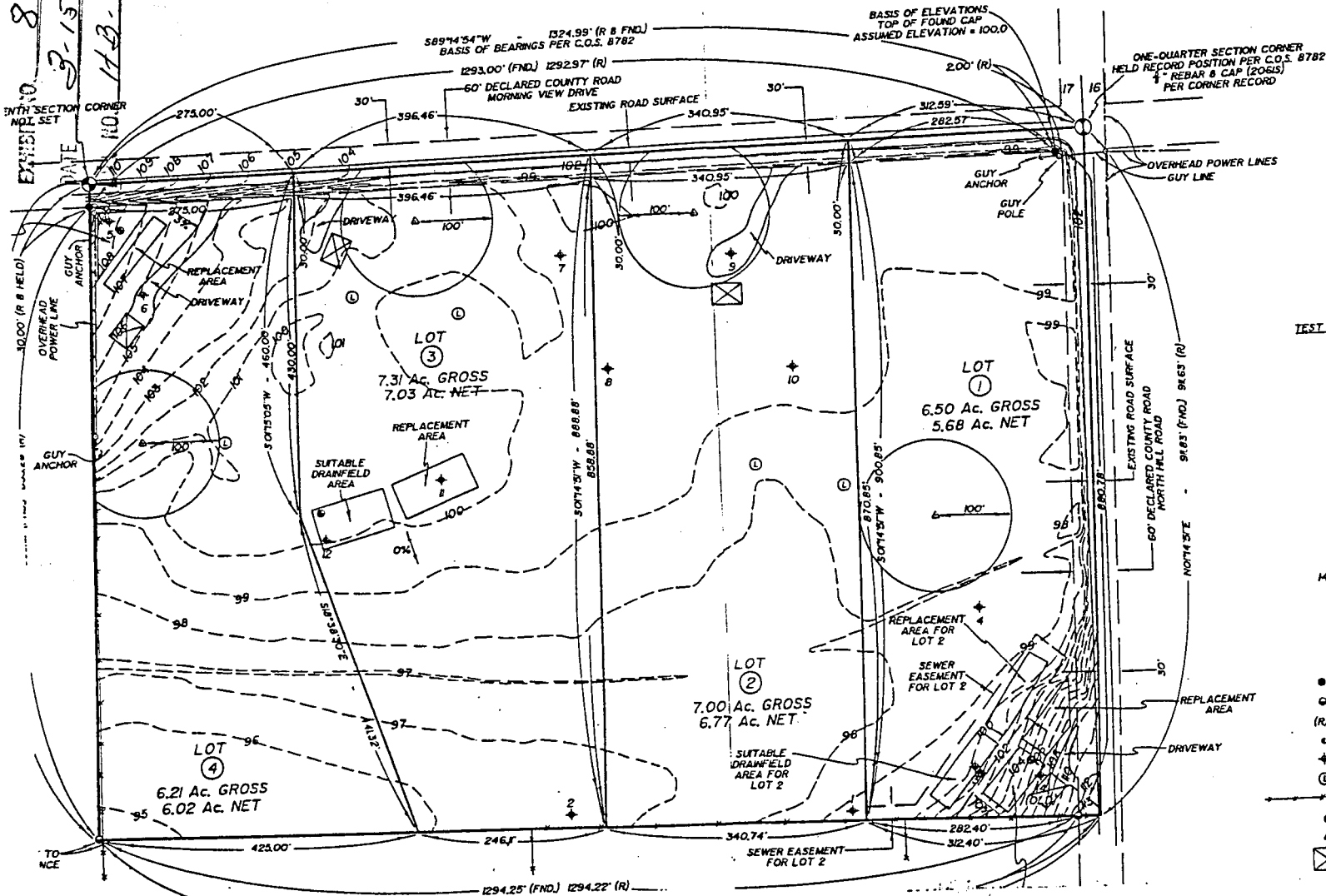
PRELIMINARY PLAT OF
"SUNRISE ACRES ON
MORNING VIEW DRIVE"

SCALE: 1" = 100'

CONTOUR INTERVAL = 1 FOOT

STATE NATURAL RESOURCES

EXHIBIT NO. 8
DATE 3-15-95
11-B-473



TEST HOLE #	ELEVATION
1	99.0
2	96.7
3	100.4
4	98.8
5	108.2
6	105.8
7	99.8
8	99.5
9	99.7
10	99.5
11	100.6
12	100.0
14 (OLD)	107.2

LEGEND:

- FOUND $\frac{1}{4}$ " REBAR & C.
- FOUND $\frac{1}{4}$ " REBAR & C.
- (R) RECORD INFO. PER C.O.
- ⊕ POWER POLE (OR AS N)
- ⊕ TEST HOLE (NUMBERED)
- ⊕ FOUND FLAGGED LATH
- EXISTING FENCE LINE
- ⊕ PERC TEST SITE
- ⊕ PROPOSED WELL SITE
- ⊕ BUILDING SITE

PRELIMINARY PLAT

OF "ANGEL POINT ESTATES"

LOCATED IN
SE 1/4 SW 1/4 SEC. 20, T.26N., R.20W., P.M.J., FLATHEAD CO.

SCALE: 1" = 100'

FROM THE OFFICE OF: HERSMAN LAND SURVEY
P.O. BOX 223
SOMERS, MT 59932
(406) 857-3563

FOR: HAROLDSSEN, DAVID & LINDA
DATE: JULY 19, 1994
PURPOSE: MINOR SUBDIVISION.

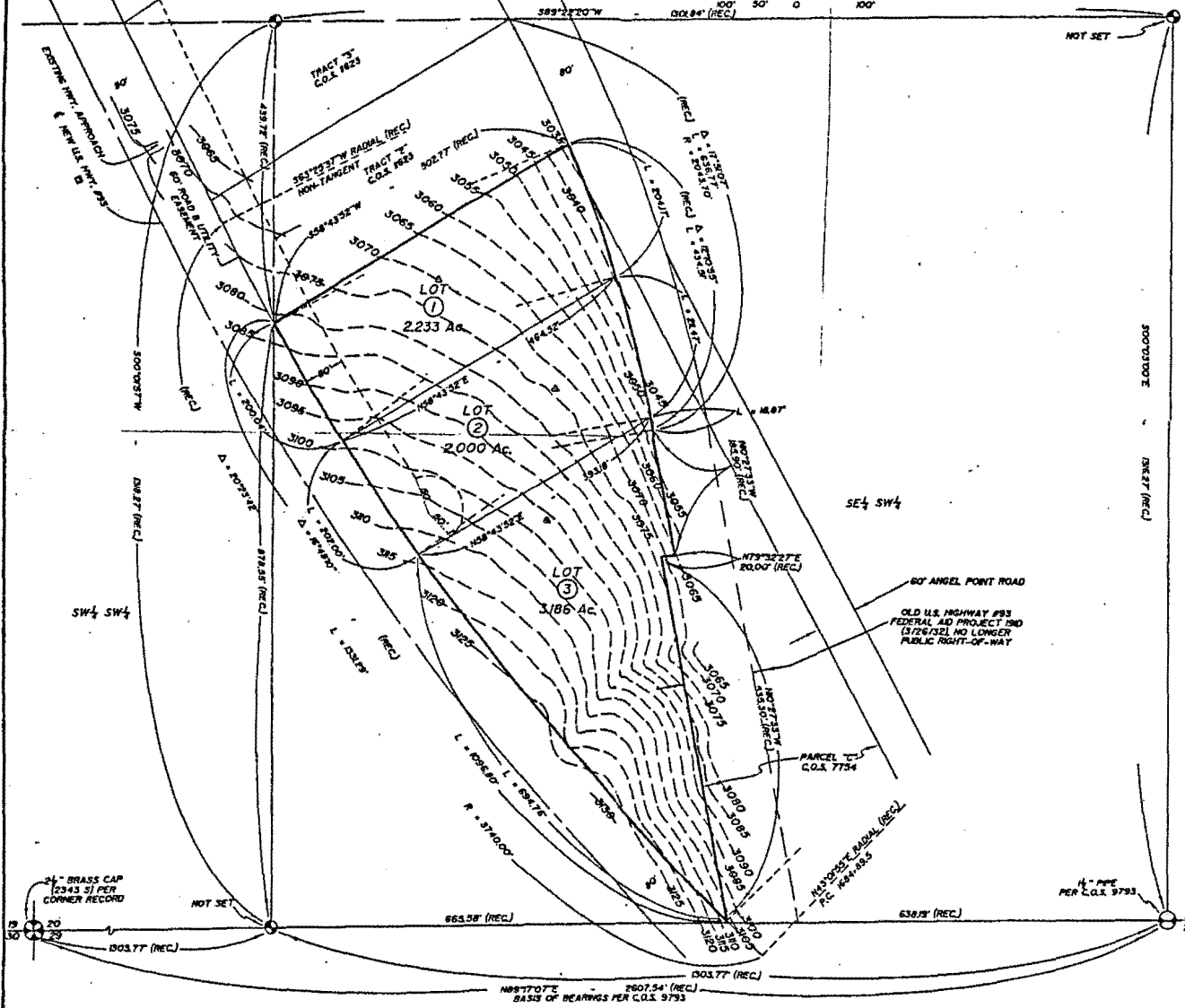


CONTOUR INTERVAL = 5 FEET

- LEGEND:**
- SECTION CORNER (AS NOTED)
 - 1/4 CORNER (AS NOTED)
 - 1/2 CORNER (AS NOTED)
 - RECORD INFORMATION
 - TEST HOLE
 - BASIS OF ELEVATIONS:
 - BASIS OF ELEVATIONS IS U.S.G.S. BENCH MARK "T-447" ELEVATION = 3086.20
 - U.S.G.S. BENCH MARK

David P. Dries, PLS

Date



SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 3-15-95
BILL NO. H-8-473



FLATHEAD COUNTY PARKS AND RECREATION

225 Cemetery Road, Kalispell, MT 59901
(406)758-5800 FAX (406)758-5929
CONRAD ATHLETIC COMPLEX 758-5805

SENATE NATURAL RESOURCES

EXHIBIT NO. 8

DATE 3-15-95

BILL NO. HB-473

FLATHEAD COUNTY PARKS AND RECREATION

SUBDIVISION REVIEW

Name Moose Run Kind Residential

Phase or Total Development Total

Total Acreage 25 Acreage in Lots 9.98 Acreage Offered 0

Acreage Required Yes

Cash-in-Lieu: Offered no Required yes

Proposed Park Topography N/A

Wooded Yes Open Area Marshy No

Water Access No Road Access Yes

Nearest Public Park Whitefish Dev./Undev. Dev

Park Land Needs in Area Yes

Other Park Lands in Subdivision No

Comments: Winter Sports Inc. is not providing recreation opportunities for lower or middle income residents. Playgrounds are not being provided for permanent residents of the area. This should be a concern of Winter Sports, Inc.

Recommendations: We strongly recommend that cash-in-lieu equal to 1/9 of the unimproved lots be paid.

Reviewed by: Wayne Worthington and Bob Norwood Date 3-6-95

Title: Vice-President, FCP&R Board/Superintendent

Survco Surveying, Inc.

P.O. Box 3727 • 211 Haggerty Lane • Bozeman, Montana 59715
Phone 406-587-5407 • Fax 406-587-5408

March 14, 1995

Sen. Lorents Grosfield, Chairman
Senate Natural Resources Committee
Capitol Station
Helena, MT 59620

SENATE NATURAL RESOURCES

EXHIBIT NO. 9

DATE 3-15-95

BILL NO. HB-473

Re: HB 473

Mr. Chairman and Members of the Committee:

I am in support of HB 473. This legislation will mitigate some of the loss of property rights caused in part by actions of this Committee, under different leadership, in the 1993 session. In reality probably few, other than special interests, remorse the loss of countless 20 acre parcels. The real impact of last session's Subdivision revisions affects not the developer, but the Mom and Pop Montana citizen who find it necessary to sell a parcel or two of their land to make ends meet. The "Occasional Sale" offered them an affordable avenue to meet their needs, and, through strongly worded evasion criteria at the local government level, was not near the abuse it was made out to be.

These folks now must go through the Minor Subdivision process to accomplish the same goal, at a much greater cost. Survey costs are double to triple, review fees must be paid, local road standards, most often requiring paving, must be met and cash-in-lieu of park dedication must be paid. I have a long list of clients who would like to split off a parcel or two who are waiting for the laws to loosen up because it is simply not economically feasible to proceed. The market will simply not bear the cost of development. Almost daily we hear that Montanans are being priced out of owning their own home. The regulatory process is a significant source of the increased cost of buildable property in Montana.

HB 473 is an effort to lessen some of these development costs, particularly for Minor Subdivisions. Removing the possibility of an environmental assessment is a step in the right direction. Another step would be to amend HB 473 to remove any requirement for park dedication or cash-in-lieu thereof for Minor Subdivisions. Cash-in-lieu for Minors is nothing more than a ransom which must be paid to obtain subdivision approval. The park dedication requirements for Major Subdivisions is much more equitable under the proposed New Section 9 of HB 473.

DATE 3-15-95BILL NO. HB-473

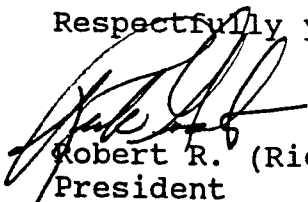
I very strongly support the New Section 10 of HB 473. Under current law the only legal recourse available to a developer who questions the decision of a local governing body is a Writ of Revue. A Writ of Revue allows the applicant to ask a District Court if the governing body, which made the decision, had, in fact, the legal authority to either approve, conditionally approve, or deny a subdivision application. The Findings of Fact on which the governing body made its decision are not part of the proceedings, only the question of whether or not they had the legal authority to make the decision. An arbitrary or capricious decision made by the governing body is not reviewed by the Court. This amounts to basically no recourse for the developer. Section 10, however, puts local government in a position where they must base their actions on the same laws, rules, and regulations as the developer. Local regulators are nervous about this section of the law because they fear that taxpayers will be stuck with having to pick up the tab in the event of an adverse legal decision against the local government. This is exactly why this is such a crucial part of this legislation. If unjust decisions are made by the local government, and the taxpayers are forced to pay for these unjust decisions, these people will be replaced with individuals that the public has the trust in to make a proper decision.

I have actively followed subdivision reform legislation, both on my own and in numerous official capacities on behalf of the state body of registered land surveyors since 1985. I found it interesting to read comments made on the front page of the 'Bozeman Chronicle' on Sunday, March 12, 1995 by members of the planning community. The planners (regulators) are concerned with the fiscal impacts of having to implement any new changes in subdivision law into their local regulations. I will admit that I have missed a couple of committee hearings over the past ten years, but never, when the planning community was testifying in favor of more stringent regulation, did I hear one person express a concern that any changes would be an inconvenience or cause a fiscal hardship for them to implement. Seems finding the time and money to implement more regulation is not a hardship, but removing a regulation or two is.

Politically the pendulum has been on a long swing in one direction with more and more rules and regulations stifling private property rights. It is time to bring the pendulum back more toward the middle, and HB473 is definitely a step in the right direction.

I strongly urge your support of HB473, and urge the amendment of no park requirement for Minor Subdivisions.

Respectfully yours,



Robert R. (Rick) Gustine, P.L.S.
President



**MONTANA ASSOCIATION
OF REALTORS®**

The Voice for Real Estate™ in Montana

SENATE NATURAL RESOURCES

EXHIBIT NO. 10

DATE 2-15-95

BILL NO. HB-473

EXECUTIVE OFFICES
208 North Montana, Suite 10
Helena, MT 59601

Telephone 406 443-4032
In Montana 800-477-1864
Fax 406 443-4220

February 13, 1995

The Honorable Richard Knox, Chairman
Committee on Natural Resources
Montana House of Representatives
Capitol Station
Helena, Montana 59620

RE: House Bill 473

Dear Chairman Knox,

HB 473 is reasoned legislation that addresses environmental concerns while taking into account the needs and rights of property owners in Montana.

The Bill:

- Section 2. Adds language to the purpose section of the statute that protects the rights of property owners. The section will provide Legislative guidance to Montana Courts when the courts is asked to interpret the subdivision statute. The new section assures that, for the first time, the rights of property owners will be taken into account when local governments review requests for subdivisions.

- Section 3. Adds property transfer by gift of agricultural land so long as the land is continually used for agricultural purposes. This section will ease the current inability of persons to transfer agricultural land on to the next generation without subjection to serious gift and estate tax consequences.

- Section 4. This section requires that developers complete improvements with a subdivision before approving a final plat. In the event bonding is used to provide security for improvements, the section modifies the bonding requirements by requiring incremental bonding and permitting bonding of projects finished in phases. This section will assure that improvements are completed while keeping development costs in sync with revenue flows.



- Section 5. This section lowers costs where five or less parcels are subdivided or readjusted by limiting environmental assessments (EAs) to major subdivisions. The section also asks that local governments, within statutory limits, clearly articulate EA criteria via rule making. This section can reduce the cost of the division of small tracts by as much as \$1,500.00 per tract.

In addition, the section will give Montana landowners a clearer understanding of the local rules and regulations they must follow when subdividing larger parcels of land than is the case today. The section also gives local governments more flexibility in adopting subdivision rules that meet local needs.

A concern mentioned by some is that a subdivider will be able to escape environmental review of a large number of land divisions by creating minor subdivisions (five parcels per year over a period of years). Under 76-5-505 MCA (not subject to amendment by this bill) local governments can impose reasonable requirements for minor subdivisions created from a tract of land. Thus, local governments retain the right to require that environmental information be developed on minor subdivisions of a tract of land. Furthermore, under 76-6-608 MCA, local governments retain the ability to determine the extent to which reasonable environmental information is necessary before approving additional subdivisions of a tract.

Finally, we note that public hearings are still required under 76-5-609 MCA for additional (beyond the first) minor subdivisions of a tract of land. The public has a clear opportunity to comment on and therefore the opportunity to impact the environmental consequences of multiple divisions of a tract of land through the use of this statute.

- Section 6. This section also increases the local government review criteria by including:

- 1) review of subdivision's impact on agricultural water user facilities.
- 2) mitigation requirement but only if the local government justifies the requirements in writing by substantial credible evidence.
- 3) an exemption for minor subdivisions in certain master planned areas.

Under this section, a subdivision's impacts on agricultural water user facilities such as ditches, canals and pumping facilities must be taken into account by the local government when reviewing a subdivision.

This section also provides, for the first time, that the local government can require that a subdivider minimize and mitigate significant adverse impacts that a subdivision may have on agriculture, ag. water use facilities, local services, the environment, wildlife & habitat, as well as public health and safety. the local government will also be able to disapprove a plat if mitigation is not possible. 118.47

To assure that mitigation requirements or reasons for denial are reasonable, the section also requires the local government imposing mitigation on a subdivider must issue written findings based on substantial credible evidence that mitigation is necessary or the plat denied.

This section will assure that a local government does not act in an arbitrary or capricious manner thus avoiding litigation resulting from its subdivision decisions. The section will also assure that a local government makes subdivision decisions based only on the specific criteria articulated by the legislature.

The section provides that certain minor subdivisions are exempt from review if the local government has a master plan in place and the minor subdivision meets the criteria of the master plan and any zoning governing the parcel to be divided. This provision, if properly implemented, will save the purchaser of a parcel as much as \$2,500.00 since the full blown subdivision review will no longer be necessary without

- Section 7. Clarifies that minor subdivisions are not subject to environmental assessments.

- Section 8. This section allows local governments to require developer to pay for capitol improvements that are directly attributable to the subdivision. This is a new section in the law. The section assures that subdivisions do not overwhelm the current service base of local government. The section also provides that the developer is required only to pay for capitol services that are reasonably and directly related to the subdivision.

- Section 9. the section makes the park dedication statutes more flexible by

- 1) adopting a sliding cash in lieu of scale based on lot size. The scale recognizes that smaller lots will create the need for additional park space and therefore places a premium on the "cash in lieu" value of small lots.
- 2) Creating certain exemptions from park land. The section recognizes, for example, that dedicated parks are not necessary to provide open spaces when the lots in a subdivision exceeds five acres in size.

3) Allowing donated funds to be used for park maintenance.

The section allows local governments the ability to use funds paid in lieu of land to be used for the maintenance of parks to be used by residents of the subdivision. The section accepts the wisdom of maintenance of current facilities in light of increased use instead of simply expanding a local government's thinly stretched existing service base by creating additional parks. The section requires that current park services must be reasonably available and within reach of subdivision residents.

- Section 10 Clarifies that developers, adjacent landowners, and local governments can seek judicial relief from preliminary plat decisions and sets thresholds for suit. This section recognizes that a preliminary plat is, for all practical purposes, the final decision document of the local government.

The section therefore specifically overturns the Montana supreme court decision in City of Kalispell v. Flathead County, 93-069 (1993). In that decision, the court opined that a decision on a preliminary plat could not be judicially reviewed because the plat was not the final administrative finding of the local government. The Court held that because the administrative review process was not exhausted, the plaintiff lacked standing to seek judicial relief.

The section also clarifies who can bring suit. In the past, "standing" determined who could bring suit against a local government regarding its decision on a subdivision. A person's standing, or her/his ability to show harm or damage as a result of a local government decision, was open to judicial interpretation on a case by case basis only.

The section defines who can bring suit against a local government for its decision regarding a preliminary plat. First, the section permits a developer to bring suit against a local government for damages in the event the local government's decision is arbitrary or capricious, is unlawful, or exceeds its lawful authority. The potential for suit to be brought under this section is substantially reduced by the local government mitigation requirements found in section 6 of the bill. The language in section 6 requiring local governments to submit mitigation requirements in writing and supported by reasonable credible evidence will assure that local government act in a responsible and legal manner.

Second, the section further permits a number of stakeholders in a subdivision to turn to the courts to challenge a local government decision regarding a preliminary plat in state district court. Challenges will probably not be heard by the courts

if the plaintiff has failed to fully participate in the public subdivision review process and any related master plan and zoning public hearings. Any challenger will be also required to illustrate, by a preponderance of the evidence, that the local government acted unreasonably under the controlling statutes, unlawfully or beyond the scope of its authority.

The subdivider can challenge the decision in district court. A person who owns land contiguous and who can demonstrate the likelihood of material injury to his/her property can challenge the local government's decision. We note that for both the subdivider and his/her neighbor, this bill provides protection of private property rights under section 2.

Neighbors who are not contiguous to the subdivision but who suffer a decline in the quality of their property because of activity caused by the subdivision will be able to bring suit against the developer and/or the subdivision residents under Montana's nuisance and trespass laws. The bill in no way diminishes the ability of any party to seek redress or abatement of a nuisance (such as noise, dust, or actual trespass) under Montana law.

A local government may also bring an action in district court against another local government concerning a subdivision decision. This does occur as the case noted above relates. This provision is particularly important for two reasons. First, local governments may have conflicting agendas and jurisdictions. Second, local governments provide the citizens' voice in the planning and development process. Third, local governments have been given certain police powers by the Legislature. In the land development arena, local governments have the power to protect the public health and safety.

First, local governments in Montana may have conflicting jurisdictions over subdivision control. We note that certain cities possess certain jurisdictional controls up to four and one half miles beyond their municipal boundaries. This section gives municipalities the authority to seek judicial relief from decisions made, for example, by county commissioner that are contrary to the municipality's best interests.

Second, local governments represent the citizen's voice in planning decisions. Acting through their local governments, citizens can seek reversal of a competing local government's decision to issue or deny a preliminary plat. The bill does prevent undue harassment of orderly development. While the bill limits persons with no direct interest in the subdivision from litigating a local government decisions, the bill specifically allows any citizen to petition their local elected officials to bring suit on behalf of their community.

Furthermore, persons with no direct interest in a subdivisions are also encouraged as well as afforded every opportunity to participate in the public process regarding zoning, planing and the local government review of the specific subdivision itself.

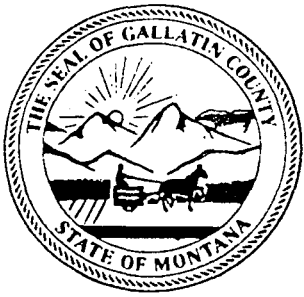
The section affords all Montanans and their local governments far more access to judicial relief from a local government decision to approve or deny a preliminary plat than the law currently affords. The section also assures that orderly development approved by the proper authorities will NOT be subjected to delays and harassment through frivolous lawsuits.

Third, local governments have the power to regulate land use activity under the state's police powers. The Legislature, through HB 473, enhances the powers of local governments to assure that public safety and health concerns are met. For example, local governments have the ability to designate areas in their jurisdiction that may be environmentally sensitive through master planning and zoning. Local governments are also afforded the opportunity to advise everyone up front what are deemed environmental sensitive areas.

If we can be of further information, please let us know.

Sincerely,

Collin K. Bangs
Collin Bangs, Chairman
Legislative Committee
JMS/11



REPORT NO. 11
DATE 3-15-95
GALLATIN COUNTY HB-473
331 West Main, Rm. 301 • Bozeman, MT 59715

County Commission

Kris Dunn
Jane Jelinski
Phil Olson

Phone (406) 582-3000
FAX (406) 582-3000

March 14, 1995

Senator Lorents Grosfield, Chairman
Senate Natural Resources
Montana State Legislature
Capitol Station,
Helena, Mt. 59620

Dear Senator Grosfield:

Please enter this letter into the record in opposition to House Bill 473 - An Act Generally revising local subdivision laws. I oppose this legislation for the following reasons:

1. This is an unfunded mandate to every city and county in the state. The ink is barely dry on the revisions to city and county subdivision regulations which were required by the changes to the Montana Subdivision and Platting Act during the last legislative session. The changes in HB 473 would require another substantive revision of our regulations.

2. The amendments proposed for Section 76-3-603 would exempt minor subdivisions from providing an environmental assessment. We have had a number of instances in our county where a developer subdivides in a series of five parcel sequences in order to meet lower standards for park requirements and environmental information. The cumulative impacts of these contiguous developments are in fact greater than major subdivisions which are planned and reviewed as a whole.

The consequences of deleting the requirement that developers provide "maps and tables showing soil types in the several parts of the proposed subdivision and their suitability for any proposed developments in these several parts. . ." can be seen on CNN tonight. Watch the homes in California slide to oblivion because they were built on unstable and unsuitable soils. The human misery which results from developing in environmentally inappropriate areas is overwhelming. Preventing these tragedies is what subdivision review is all about.

3. Deleting (3) from the act is another unfunded mandate. It ignores the right of the community to understand the impact of new development on their schools, services, health, safety and welfare. Studies show that for every dollar a new residence puts into the tax base, it extracts \$1.36 worth of local government services. Local government officials and all residents have a right to evaluate the impact of a new development because ultimately it will raise their taxes and has the potential to lower the quality of their transportation services and schools.

Please vote against HB 473.

Respectfully submitted,

Jane Jelinski, President
Montana Association of Counties

Senator Grosfield, senators for the record ~~may~~ I am Kris Dunn,
Gallatin County Commission Chair. I stand before you
in opposition to HB 473.

We as a commission must make subdivision review
decisions for 14 Planning and Zoning districts, 3 City/County
districts, and ^{un}incorporated county districts. To do this
we rely on clear, consistent and objective statutes and
criteria. HB 473 ~~does~~ For the most part HB 473 does
not change nor clarify the subdivision statutes for the
State of Montana but rather creates confusion and
subjectivity which would dilute our ability to make
credible, legal and clear decisions.

I would ask you to compare what is being stricken
in section 76-3-603 sections 2, 3, 4 and what is being
added to 76-3-608 Section 4. As a commissioner
making a review decision based on credible, substantial
evidence would require ~~me to request~~ the very
specific data being struck from 76-3-603.

Senators I would propose to ^{may be} that by passage of HB
473 ~~could force~~ County Government to become developers,
realtors and builders. Please see Section 4 which refers
to bonding requirements (my pg 3) MCA 76-3-507.
~~The governing body~~

Section 10 - Violations raises more confusion.
I support due process of law and do not oppose
the right of recourse thru the District Courts but
the language here is perplexing.

Read Section 2 - then insert Section 3.

Senator Grosfield, Senators, HB 473 does not clarify
the law nor further protect our citizens - developer nor
public - rather it's confusion and subjectivity will once
again have our Court system writing law rather than
interpreting law. Please vote against HB 473



SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 3-15-95
BILL NO. H.B. 473

City of Helena

March 1, 1995

Senator Lorents Grosfield, Chairman
and Members of the
Senate Natural Resources Committee
Helena, MT 59601

RE: House Bill No. 473

Dear Senator Grosfield & Committee members

There are several proposed changes in the law as set forth in House Bill No. 473 which cause me considerable concern. On behalf of the City of Helena, and as the Helena City Attorney, I would like to comment on several of the proposed changes.

First, let me address the proposed addition to Section 76-3-102, MCA, of the language (6) protect the rights of property owners. The purpose of government is to protect the rights of all persons, including property owners, and I don't believe that property owners should be singled out. I don't believe it is necessary to include that language, but if you feel something should be added, it would be more appropriate if the language were changed to read "protect the rights of all citizens". Ultimately, I believe any addition to that statement of purpose is unnecessary.

Second, I'm particularly concerned about the language addition proposed for Section 76-3-507(3). That appears to exempt a governing body from immunity for approving or disapproving a final plat. It is that kind of decision that is the *raison d'être* for legislative immunity. A city or county commission acting in good faith should not be personally imperiled for the decisions such a body. As a legislative committee you have legislative immunity and as the Legislature you have legislative immunity. That same protection should be afforded to local governments. The elimination of such immunity only encourages lawsuits with the attendant expenses. Taxpayers then pay for attorneys and possible damage awards to whichever side may be disgruntled about the decision of a governmental entity.

My third concern is about the changes proposed for Section 76-3-608, MCA. The new language of subparagraph (4) would add . . .

Senator Lorents Grosfield
March 15, 1995

based on substantial credible evidence, That clearly puts an undue burden on a governmental entity. Subparagraph (5) also imposes an unreasonable duty on a governmental entity, particularly subsection (b): The language in that section would require a governmental entity to assist in designing a project for a subdivider. I believe that merely muddies the waters concerning the duties of the developer and duties of the governmental entity in the review process. The governmental entity should not have the obligation of redesigning a proposed subdivision for a developer. Further, subparagraph (6) creates problems because of the vagueness of its language and the obligations placed on the governmental entity. For example, the master plan must include (ii) a discussion of physical constraints on development that exists within the area encompassed by the proposed subdivision. Does that mean a topographical evaluation of all the property within the master plan is required? That is an unreasonable burden to place on the governmental entity and its taxpayers.

Fourth, proposed Section 9 presents all kinds of problems for the determination of parkland, the first being the sliding percentages; the second being how fair market value is determined; and third, how do you determine when the local governing body should waive the park dedication requirement in a PUD? Proposed Section 9 greatly changes the entire process. It isn't necessary when the present process for parkland dedication is working to protect the interests of the governing body, the subdivider and the citizens as a whole.

Fifth, as to proposed Section 10, I see no objection to subparagraph (2). However, subparagraphs (1) and (3) create significant problems for the governing body. For example, the parties who may appeal the governing body's decision pursuant to subparagraph (3) are unnecessarily limited. The decision of the governing body may affect more than the parties named. Anyone who is adversely affected by government action should have the opportunity to appeal a governmental decision through the court process. Legal action under the public and private nuisance laws does not address the governing body's decisions. It only addresses the damages to a party. There simply is no justification for limiting the persons who can appeal a decision. Anyone who is adversely affected should be entitled to his/her day in court.

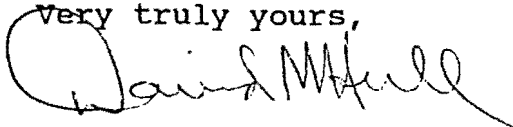
I would like to point out that the City of Helena's concerns, as well as my concerns, are based upon the threat to the governing body's ability to act in a manner believed to be in the best interests of a city and its citizens. Of course, the governing body must act in a lawful manner; however, neither it should not be

Senator Lorents Grosfield
March 15, 1995

penalized as long as the action is taken in good faith. The effect of HB 473 would be virtually assure an appeal to district court on every major subdivision and a request for damages against the governing body by whoever didn't like the governing body's decision. The provisions of HB 473 that I've raised concerns about, as set forth above, do not benefit the citizens, the governing body or even the subdivider. They merely muddy the waters and increase the likelihood of litigation. Please remember, this is not an issue of developer versus government, it is a matter of government acting to assure protection and planned growth for the benefit of all its citizens, including developers.

Thank you for your consideration of these concerns. I respectfully request that they be taken into consideration when final action is taken on this bill and that, specifically, new Sections 9 and 10 be deleted.

Very truly yours,



DAVID N. HULL
City Attorney for the City of Helena
DNH/ks

c: William J. Verwolf
Kathy Macefield

SENATE NATURAL RESOURCES

EXHIBIT NO. 14

DATE 3-15-95

BILL NO. HB 473

March 11, 1995

Memo to: Senate Natural Resources Committee
Senator Lorents Grosfield, Chairman

Subject: House Bill 473

Spivey

I am a private citizen, retired businessman, operate a small business near Whitefish, and am a member of the Whitefish City/County Planning Board. I'm representing myself in all those flavors but also the Whitefish City/County Planning Board and the Citizens For A Better Flathead, a concerned citizen group of several hundred members.

We strongly oppose HB.473 for several reasons:

1. In the last session major changes were made to the Subdivision and Platting Act. Every municipality has gone through a rigorous process to change rules and procedures. Most importantly we have found those changes beneficial and in the public interest, In fact in Flathead County we are currently approving in excess of 95% of the subdivision applications filed. In Whitefish we deal with many applications and have not encountered problems with the current laws, so we see no reason to change again just two years later.
2. This bill clearly represents an 'unfunded public mandate' as every municipality would have to go through that update and training process again. We believe this is unnecessary, and undesirable.
3. This bill further shifts the property rights focus to the subdivider when in fact they are already the key component of property rights considerations. Today as a planning board we must consider the property rights of the land owner, subdivider, neighbors, community and in some cases every citizen of the State. Effectively balancing those allows us to make recommendations reflecting the interests of all parties and all property rights affected. This bill constrains that capability and we object to that change in emphasis.



OFFICE OF THE CITY ATTORNEY

435 RYMAN • MISSOULA, MT 59802-4297 • (406) 523-4614 • FAX: (406) 728-6690

March 15, 1995

SENATE NATURAL RES. 95-1137
LEGISL. NO. 15
DATE 3-15-95
BILL NO. HB-473

Re: Opposition to HB-473 Generally Revising Subdivision Laws

Senate Natural Resources Committee Members:

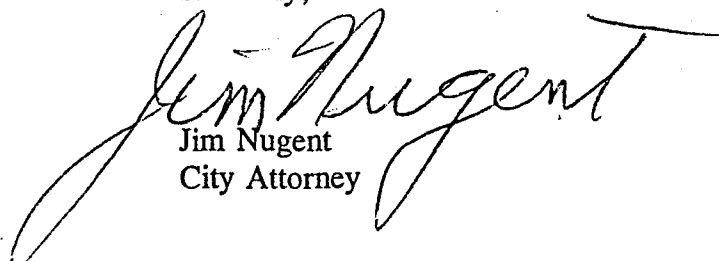
City of Missoula officials would like to take this opportunity to express their concern and opposition to HB-473 entitled "AN ACT GENERALLY REVISING LOCAL SUBDIVISION LAWS; MODIFYING THE REQUIREMENTS FOR AN ENVIRONMENTAL ASSESSMENT; MODIFYING BONDING REQUIREMENTS FOR PUBLIC IMPROVEMENTS; MODIFYING PARK DEDICATION REQUIREMENTS; ESTABLISHING PAYMENT CRITERIA FOR THE EXTENSION OF CAPITAL FACILITIES; ESTABLISHING MITIGATION GUIDELINES; PROVIDING FOR SUITS AGAINST LOCAL GOVERNMENTS;."

City of Missoula officials strongly oppose Section 10 of HB-473 which is a new section of law creating a cause of action lawsuit authorization against local government's elected governing bodies. Local government elected officials oppose creation of a cause of action against elected governing bodies and are dismayed at the lack of confidence the state legislature places in local government elected officials acting in good faith and in the public interest.

Another concern pertains to Section 9 of HB-473 which is another new section pertaining to park dedications. The provisions pertaining to "fair market value" for park dedication is a concern. What constitutes fair market value? Who performs the appraisal? Are county assessor appraisals acceptable? An appraiser's appraisal? A certified appraiser? A realtor's appraiser? Etc. This provision creates a great deal of uncertainty and confusion as to what constitutes fair market value.

HB-473 constitutes a significant unfunded mandate. Local governments revised their subdivision regulations after the 1993 state legislature. Now local governments will have to once again go through the public notice review and revision process again. This is an unfunded mandate to revise subdivision regulations.

Sincerely,


Jim Nugent
City Attorney

JN:kmr

cc: Missoula County Senators; Mayor; City Council; Alec Hansen; Legislative file

Testimony on HB 473

Before the Senate Natural Resources Committee HB 473

March 15, 1995

My name is Nancy McLane and I live in Helena. I am not a planner. I am not in the real estate business. I am not a developer. No one asked me to testify at this hearing. I have come on my own behalf because I am very concerned about this bill.

There are three provisions in this bill that particularly worry me.

First, Section 76-3-608 (5)a, that reads "Mitigation measures imposed may not unreasonably restrict a landowner's ability to develop land. . . ." This section tends to present local governments with only two choices -- to approve a subdivision as presented by the developer, or deny it. It makes it much harder to choose the middle option, which is usually the wisest one, to approve the subdivision with mitigating conditions. I think this section should be deleted.

Second, Section 76-3-608 (5)b, that reads "Whenever feasible, mitigation should be designed to provide some benefits for the subdivider." This section is as confusing to me as to the person who wrote the fiscal note for this bill. Mitigating measures by definition are meant to protect the public's interest, and it is inappropriate in this part of the process to consider benefits to the developer. The developer's "benefit" is the profit that she or he will make from the development. I think this section should be deleted.

Third, the new Section 10 that removes the public's right to question a local government decision. Section 10 limits the parties who may appeal a local government decision on a subdivision to the subdivider, a landowner whose property is contiguous to the proposed subdivision, and the city or county in which the subdivision is located. What reason is there to deny

DATE 3-15-95

BILL NO. HB-473

Mr. Chairman, Members of the Committee, for the record my name is Susan Norton and I am a member of the Gallatin County Planning Board. ^{being a member} ^{we are} This is a Board of Volunteer Citizens who donate their time and energies to the community. We are not reimbursed for the time.

I hope you will not take lightly the cost of new legislation. There is significant financial impact.

Two years ago the Subdivision Act was revised and our board undertook the task of incorporating those changes into our County Subdivision Regulations. We spent countless hours in meetings drafting and re-drafting language and conducting public hearings to adopt the changes. Training was made available, which I attended, as did our staff members. It was a 300 mile trip.

^{in an adjacent Co.} I then spent many many more hours organizing a training, organizing mailing lists, mailing invitations to indiv. P.B. members.

I understand that the fiscal note did not take into account some of the seemingly minor costs such as our mileage to ^{was conservative} trainings and for all of the board members to attend each of our meetings and hearings. ^{These do add up.} There are also un-reimbursed costs. I took time off without pay from my job to attend ^{travel out of town to} trainings. I am a single mother who must bear the cost of childcare for every meeting I attend. But just as important, is all the time and energy donated by each board member.

^{do wish to make this} I do not mind as I joined the board to contribute ^{on} to my community. ^{How} Looking at House Bill 473 I believe that it will cost more time and money to implement. ^{the prev. subdiv. bill} It is vague and citizen members will certainly need training on issues such as mitigation, ^{justification} ^{How to deal with} ^{after} ⁱⁿ mitigation, but dedication, how to benefit the subdivision mitigation.

I haven't witnessed any problems with the current Subdivision bill. The new regulations have worked very well.

^{will cut dry} I implore you not to burden local governments and citizen board members with ^{implementation of} unnecessary charges in a good law.

I am very sensitive to its impacts. [I have always been interested in my property rights as a landowner, & I felt I could best do that as a PE member]

In looking at House Bill 473 I believe that it will cost more time and more money to implement than the previous subdivision bill. It was a very cut and dry bill unlike HB 473

and complicated

HB 473 is vague and citizen members such as myself will certainly need training on issues such as justification of mitigation, how to deal with the major drugs in park land dedication, and how we are to benefit the subdivision when we mitigate its impacts.

I have not witnessed any problems with the current subdivision laws. * As a planning board we review subdivision proposals under these statutes and find them to be very fair and objective. They have worked quite well.

I implore you not to burden our local gov'ts and citizen board members with the tremendous cost of implementing unnecessary changes in a good law.

Chair
Theresa Cole

DATE 3-15-95

BILL NO. HB-473

MR Chairman and committee members
for the Record ~~my~~ I'm Roger Merlin
a rancher from Gallatin County.

I am here to explain how this Bill affects me.
~~The first thing ~~would~~ be the~~

The money to fund both
revisions of subdivision regulations
and any lost lawsuits would
come from the general fund. This
will take money from ^{extension} ~~agricultural~~
programs such as 4-H. Things like

76-3-406 already requires
notification of irrigation districts
for any survey. We do not
need to change other sections
of the subdivision regulations
to do something that is already ^{in the law}.

In addition Section 10-3-B
limits my ability to appeal
any subdivision decision. Only
contiguous landowners may ~~appeal~~ ^{appeal}.
What if a landowner is
not contiguous but has irrigation
ditches running through the ^{concerns}
property? It ~~would~~ ^{have} no ^{with} development
resource. ~~the~~ Thank you

Richard D. Idler
Land Use Counselor
P.O. Box 1631
Bigfork, Montana 59911
March 15, 1995

54th Legislature OHB0473.01

BILL NO. 473

INTRODUCED BY Dick Knox Winifred R

It appears to me that this Bill is designed to reduce the responsibilities placed on a subdivider or developer in the the filing and execution of a subdivision.

Briefly me concerns are as follows:

76-3-102 sub-section (6) The purpose of codes and regulations is to protect the health, safety and welfare of the public at large. Inherent in this is the regulation of property uses and the protection of private property. The introduction of sub-section (6) "protect the right of property owners" immediately introduces a conflict in land use regulation that could prove counter-productive.

76-3-207 (2-c) It has been my experience that covenants running with the land are civil matters settled in the courts rather than enforced by land regulatory agencies.

76-3-507 (2) The reduction of bond requirements commensurate with the completion of improvements should contain a "warranty" period for performance to assure that the taxpayers don't get "stuck" with faulty infrastructure to be repaired at the taxpayers' expense.

76-603 (2) A responsible developer or subdivider of his/her own volition will provide maps, tables, and soil types. I believe this should be expected of anyone in the business.

76-308 (4)(3) Mitigation where necessary should be a requirement for adverse impacts of subdivision and development.

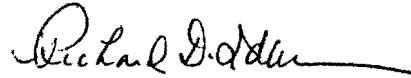
76-3-608 (5-b) The statement is superfluous.

76-3-NEW SECTION The process is too complicated; plus it adversely affects the ability to create affordable housing opportunities.

76-3-NEW SECTION ---violations---actions against governing body. This section will open the flood gate to litigation, on one hand, or shoddy development on the other. Either way the taxpayer will suffer. Smart communities need good developers and good developers need smart communities. Responsible subdividers and developers understand that grievances and misunderstandings are best resolved through administrative remedies. Most courts will not render a judgement or decision until the administrative remedies have been exhausted. I would suggest that this section is an effort to protect the irresponsible subdividers, since the responsible ones would know how to proceed on their own to resolve disputes.

page 2

What is proposed in Bill 473 is not in the best interest of the public at large, in my opinion, and should be tabled for further consideration. Until assurances can be given that the public's interest has been adequately addressed this should not be brought to the floor for a vote.



Richard D. Idler



CITY OF HAMILTON

223 South Second Street
Hamilton, Montana 59840

406-363-2101 • FAX 406-363-2102

SENATE NATURAL RESOURCES

EXHIBIT NO. 20

DATE 3-15-95

BILL NO. HB-473

March 14, 1995

Senate Natural Resources Committee
Capitol Station
Helena, Mt. 59620-1706

Re: VOTE AGAINST HB 473 - PROPOSED SUBDIVISION LEGISLATION
File Number: 95039

Honorable Committee Members:

The 1993 Legislature passed sweeping changes to the Montana subdivision laws. The legislators worked hard and long to come to agreement on the final legislation. The City of Hamilton then spent time, money, and resources to understand the new legislation and propose changes to local ordinances.

You are now being asked to consider HB 473 sponsored by Representative Dick Knox. This bill would once again force us to spend time, money, and resources to understand the new legislation and draft new city ordinances. I am extremely skeptical of the language contained in this bill. It is vague and subject to arbitrary interpretation. The City Attorney has reviewed the bill and concurs that in order to enforce many of the provisions, litigation may be necessary for interpretation.

The present subdivision laws have worked well for Hamilton. We have not experienced any difficulty with the way they are written. What are the specific problems enumerated with present law which require such sweeping changes? The present legislation does allow "gifting" and the other major components of HB 473. Let us not overhaul an engine that simply needs a tune-up.

I urge you to vote against HB 473. Thank you for your careful consideration.


Don Williamson
City Administrator

cc: Marc Racicot, Governor



MONTANA PRESERVATION ALLIANCE

P. O. Box 1872, Bozeman, Montana 59771-1872 (406) 585-9551

March 15, 1995

President

Kathy Macefield, Helena

Vice President

Gretchen Olheiser

Secretary

Kathy McKay, Columbia Falls

Treasurer

Jim McDonald, Missoula

Directors

Kathy Doeden, Miles City

Judy McNally, Billings

Marcella Sherfy, Helena

Ellen Sievert, Great Falls

Keith Swenson, Bozeman

John Brumley, Havre

Mary McCormick, Butte

Jon Axline, Helena

Kay Hansen, Helena

Senator Lorents Grosfield, Chairman
Senate Natural Resources Committee

Dear Committee Members:

The Montana Preservation Alliance (MPA) is a state-wide non-profit organization that was founded to further historic preservation of our cultural heritage through technical assistance and advocacy.

The Montana Preservation Alliance is opposed to HB 473 for the following reasons:

This bill introduces two specific changes to Montana's subdivision law which would also negatively affect historic preservation. Mitigation that is required would have to provide "benefits" to the subdivider. Therefore, if a historic or prehistoric resource is identified that needs to be protected, a typical mitigation measure would be to require documentation of that portion of the property, and/or to not allow it to be disturbed.

The subdivider realizes a profit after the land is subdivided and sold; the question that will be debated during the subdivision review process will be whether or not that profit is adequate "benefit" for this mitigation requirement, or if there should be additional "benefit" and how it would be measured.

The second change would be a limitation on who would have legal standing to sue if a bad subdivision is approved and developed. With HB 473, the only parties that would have legal standing to sue would be the subdivider, a city, a county, or a contiguous property owner. Again, if historic or prehistoric resources are negatively affected on a nearby property, no legal recourse would be available.

For these reasons, the Montana Preservation Alliance asks you to not pass HB 473. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Gretchen Olheiser". The signature is written in dark ink and is positioned above the printed name.
Gretchen Olheiser, Vice-President

**TESTIMONY BEFORE SENATE NATURAL RESOURCES COMMITTEE
REGARDING HB 473**

My name is Glenna Obie. I am a member of the Board of County Commissioners of Jefferson County. The Jefferson County Commission is very concerned about the effects that House Bill 473 will have on our county.

Some of our specific concerns include the exclusion of minor subdivisions from the environmental assessment process. In Jefferson County, we don't currently require an environmental assessment for minor subdivisions UNLESS WE SEE A NEED FOR ONE. We believe we should have the flexibility on the local level to make that decision. We are also opposed to the elimination of the language in section 5 which enumerates those specific local services which can be considered in an environmental assessment. In Jefferson County, those specified items have provided a clarity which will be replaced by ambiguity and confusion with the new language.

We also believe the new Section 10 amounts to a significant reduction in the rights of the public to be involved in the process but is an invitation to legal action whenever the result of the subdivision review process doesn't meet with the approval of the developer.

This last issue is especially important because litigation costs money and that money will come right out of our general fund budget. It's money we can't afford.

Jefferson County is now the fourth fastest-growing county in the state but it is a rural county. We have no county planner on staff. We contract for our county planning services. Besides the substantial cost, time and effort of repeating, after only two years, the process of reviewing our subdivision regulations, I think there are portions of this bill which will complicate the process and put so much responsibility on the county that a contracted planner may no longer be able to handle the work of subdivisions in our county.

My colleagues and I urge you to reject HB 473.

Good Afternoon

My name is Kelly Flaherty. My husband & I ranch in Canyon Creek, some 25 miles northwest of Helena.

I appear before you today in opposition of this bill as it is written.

If passed, HB 473 will take away our right to appeal a subdivision, unless we are adjacent landowners.

Where our ranch is located, the water source for our irrigation is over 5 miles away. During it's journey to our sprinklers, the water passes by and thru a number of other properties. In the event any of these properties decided to subdivide and drill multiples of wells, both for domestic use and/or ag use, it may severely impact the availability of our water. Our lifestyle and means of living may be threatened. If this happens, under this piece of legislation, we may not have any recourse opposing this development.

This bill, as it is written, ignores the total concept of community and neighborhood. I do not believe that we as citizens of Montana, can afford to disregard community, either economically, socially or culturally.

Impacts from development of land do not always know their boundaries. They do not know that they are only supposed to impact the adjacent land owner. Thus, these impacts may very well affect others, either downstream, downwind or down the road. It is the duty of the body to see that the citizens of Montana have the means to protect their private property rights and land values from any negative impacts brought to bear by others.

This piece of legislation, as it is written, takes away my rights as a private property owner to hold the responsible parties accountable for actions that negatively impact me.

The fact that planning boards and local governments know that they are liable for their decisions is one of the checks and balances that I, as a property owner and taxpayer have at my disposal. This reality provides me with more confidence in my local government and assures me that they will work in my best interest.

In addition, I do not agree with the park dedication provision of this bill. I do not agree with a sliding scale allowing one person to dedicate a smaller piece of parkland because their development is larger than the person next door, who is subdividing. This is not fair and equal treatment first of all.

Secondly, this provision weakens the current parkland dedication provision by lowering the amount of park land that can be dedicated. I am sure the proponents will tell you that with large yards, parks are not needed. But I have seen very few private

STATE NATURAL RESOURCES

POST NO. 23

DATE 3-15-95

FILE NO. H3-473

yards that have baseball diamonds, skating rinks, tennis courts, etc. that are made accessible to all the surrounding neighbors at all times and at no cost or invitation.

I urge you to not pass this bill as it written.

League of Women Voters of Montana



SENATE NATURAL RESOURCES

EXHIBIT NO. 24

DATE 3-15-95

BILL NO. HB-473

WRITTEN TESTIMONY PRESENTED BY THE LEAGUE OF WOMEN VOTERS OF MONTANA

Senate Natural Resources Committee
3:00 p.m., Wednesday, March 15, 1995
House Bill 473 by Knox

Two years ago Montana's subdivision laws underwent a major revision, with the elimination of exemptions and loopholes under which most subdivision activity in the state for decades had escaped any meaningful review. HB 473 proposes few major changes, but rather tinkers with certain aspects of the current law. Unfortunately, in many instances this tinkering would reduce local discretion and would detail review criteria for vastly different situations. Many of the changes proposed in this bill are well-intentioned, but largely unnecessary or ill-advised.

The proposed changes to the bonding requirements in Section 4 could weaken the governing body's ability to ensure that agreed upon improvements are actually carried out. The governing body already has discretion in structuring a bonding agreement or other reasonable security. This section attempts to unnecessarily micromanage the decisions of the local government. Subsection 3 appears to attempt to settle a judicial question by fiat.

Section 6, Subsections 4 and 5, would involve the local governing body in the design of mitigation measures for a proposed subdivision. The government's role would no longer be to identify problems with a proposed subdivision and communicate them to the developer, who could then address them and bring the proposal back. Now the local government would begin to take on responsibility for redesigning a subdivision and proposing mitigation measures. We believe that the proper role of government should be to review subdivisions, not to redesign them.

Subsection 6 of the same section would exempt minor subdivisions from review for their effects on agriculture, local services, the natural environment, wildlife and wildlife habitat, and public health and safety, if the proposal is for an area where a master plan has been adopted. Yet the criteria laid out for a master plan are too minimal and vague to warrant the waiving of these important review criteria.

The proposed changes to the park dedication requirement are a mixed bag. It may make sense to have a sliding payment scale based on the size of the parcels being created, but it does not make sense to mandate the elimination from the park dedication requirement of land proposed for subdivision into parcels larger than 5 acres. Local governments should have the discretion, depending on local circumstances, to waive or not to waive the dedication for larger parcels. In some parts of the state, a large volume of subdivision of land into parcels of 5 acres or more may warrant a park dedication requirement for such parcels.

EXHIBIT NO. 24DATE 3-15-95BILL NO. HB-473

The lack of funds for park maintenance is certainly a problem for many local jurisdictions. However, it is not clear that park dedication funds are the best source of support for maintenance. Park dedication monies are highly variable from year to year, depending on the level of subdivision activity. And if local governments become dependent on park dedication funds for maintenance, the acquisition and development of parks may suffer. Proposed New Section 9 also details criteria for the development of parks. But with such diverse levels and patterns of development across Montana, such decisions would be better made at the local level.

Proposed New Section 10 reiterates rights to sue which already exist in law. This section also invites an appeal to district court of virtually any subdivision decision.

The League of Women Voters of Montana believes that, with the elimination of the major exemptions, the current subdivision laws provide a good framework for local government review of subdivisions. The current law strikes a good balance between state guidelines and local discretion. In the absence of any pervasive statewide problems, we believe the legislature should refrain from tinkering with the subdivision laws as they now stand.

The League of Women Voters of Montana stands in opposition to HB 473 and urges a do not pass recommendation by the committee. Thankyou

Chris Imhoff, Legislative Chair LWVP



SENATE NATURAL RESOURCES
EXHIBIT NO. 25
DATE 3-15-95
BILL NO. HB-473

City of Helena

March 15, 1995

Senator Lorents Grosfield
Senate Natural Resources Committee

Dear Committee Members:

The 1993 Montana Legislature adopted extensive revisions to the Montana Subdivision and Platting Act. The law was revised after several years of work was completed with a wide range of various interest groups (including realtors, developers, local government, environmentalists, agricultural groups, etc.) to address concerns, and compromise was reached. After the law was adopted, each city and county developed and adopted new subdivision regulations to comply with the changes.

In the City of Helena, public hearings were held before the Planning Board and City Commission for a total cost of approximately \$2,000. The requirement to revise the City's subdivision regulations did not include funds to cover the costs that were borne by the City and its taxpayers. During the time needed to revise the regulations, other requests by citizens were put on hold.

Since October 1993 when the new local subdivision regulations were adopted, the City has reviewed and approved three major subdivisions creating 115 residential lots (including one major subdivision with 65 lots, which was initially denied and then resubmitted and approved with 60 lots for 69 dwelling units); one major subdivision for 220 units for rent; and eight minor subdivisions creating 23 lots.

The Helena City Commission is opposed to HB 473 for the following reasons:

- 1) The revised subdivision regulations have not been in place long enough to determine if there are any problems, or what those problems might be. In fact, specific problems remain to be identified that would warrant HB 473.
- 2) Needlessly revising the subdivision regulations requires additional time that is not readily available. Helena, like many other Montana communities, is in a period of rapid growth and development. Revising regulations takes time away from other development projects and can result in unnecessary delay for developers.

Page 2
HB 473

3) Needlessly revising the subdivision regulations incurs additional expense that is not provided by the Legislature (i.e., an "unfunded mandate") that would be passed down from state government to local government. The last thing cities and counties need is to be required to invest additional time and money where it is not needed. Will the state be providing the additional funds to assist local governments with this mandate?

4) If changes are going to be made to the Subdivision and Platting Act, they should only be considered after there has been a discussion with the various groups that have an interest in those changes. This careful and considered discussion is important to avoid confusing language in the proposed legislation.

5) HB 473 severely limits the aspects the governing body may require to be considered with the environmental assessment by striking "such additional relevant and reasonable information as may be required by the governing body."

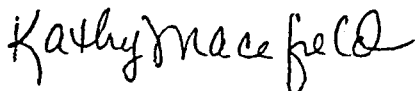
6) HB 473 has confusing language for mitigation considerations. In order to adequately address the mitigation measures, it may take more time than is presently provided by the subdivision review process (60 days for major subdivisions, 35 days for minor subdivisions).

7) In addition to the sections in HB 473 related to the mitigation, the proposed parkland requirements will be time-consuming for both local governments and developers to address through the subdivision review process, and will lead to confusion that will result in costly litigation to resolve differences. As a result, subdivisions may not be completed within the timeframe required by the law, or other development proposals will be placed on hold so that priority can be given to those projects going through the subdivision review process.

8) HB 473 identifies the parties that are able to appeal a governing body's decision for a subdivision. As a technicality, how would a county or city commission sue itself for a decision it made? Yet, the public has been specifically excluded from that legal process.

For these reasons, the City of Helena strongly urges you to not pass HB 473.

Sincerely,



Kathy Macefield
Planning Director

TESTIMONY IN OPPOSITION TO HB 473

Mitigation, which reduces the severity of a disaster and the need to respond, is the wave of the future of emergency management. We have learned that we cannot control nature and prevent disasters, but we can reduce the impact through common sense development, called mitigation.

Mitigation is important because it saves lives and saves taxpayers money, by ensuring that people do not build in high risk areas like floodplains or on earthquake faults. There's a good reason for this, because we cannot prevent the disasters from occurring, but we can certainly cut down on loss and damages through rational and intelligent development, which is what mitigation is all about.

As the Montana Disaster and Emergency Services Association President, I am gravely concerned that this bill will begin to gut the mitigation standards that previous legislatures had the prudence to adopt.

Please protect the people and land of Montana by defeating this bill and continue to encourage our land to be developed with public safety in mind. Mitigation makes sense, that is why it is stressed as the most important phase of emergency management by the Federal Emergency Management Agency, because it provides more return for the dollar than the other phases, which are preparedness, response and recovery.

Paul N. Spengler,
Lewis and Clark County
Disaster & Emergency Svcs. Coord.

House Bill 473 Weakening Our Subdivision Law

SENATE NATURAL RESOURCES
EXHIBIT NO. 27
DATE 3-15-95
BILL NO. HB-473

Summary

This bill reopens the debate on our subdivision law. There are some major policy issues involved with HB 473, introduced by Rep. Knox (R-Winifred): it lowers the park dedication requirement; it lets park money be used for maintenance of parks (will another park ever be purchased?); it waives the environmental assessment process for minor subdivisions; and it restricts who can appeal a subdivision decision to landowners and the developer - so that citizens can not appeal a decision.

Citizens May Not Appeal Subdivision Decisions

The worst aspect of HB 473 is that citizens will lose their right to appeal subdivision decisions. Currently if a local government makes an "arbitrary and capricious" decision to grant (or deny) a subdivision, anyone that is affected by the decision may sue the local government to challenge their decision.

HB 473 only allows the developer and an adjacent landowner to appeal a subdivision. This is not fair. Why shouldn't citizens that feel their local government acted "arbitrarily and capriciously" not be able to challenge a subdivision decision?

There have only been a handful of subdivision appeals by citizens. However, one could argue that local governments now know that they can be sued if they act in an "arbitrary and capricious" manner. What will happen when this hammer is not over them? If HB 473 passes, local governments will have to satisfy the developer and the adjacent landowner - but they will not have to satisfy citizens.

Park Dedication

Currently developers have to set aside 1/9 of their subdivision as a park. HB 473 lowers the amount of park land that can be dedicated by developers, putting the amount of land for parks on a sliding scale.

Park dedication requirements can be used for playgrounds, ball parks, and saving environmentally sensitive areas, such as riparian areas along lakes or streams. With all the

development pressures in the state, it does not make sense to weaken our park dedication requirements.

Additionally, the park dedication requirements of HB 473 are scaled in the wrong direction. As HB 473 is written, the bigger the lot size, the smaller the park dedication. This gives developers an incentive to develop larger lot sizes. If anything, there should be an incentive to cluster development.

Finally, HB 473 allows a government body to accept money for park maintenance instead of setting aside park land. We are afraid that governments may never buy another park if they can get money for park maintenance.

No Environmental Assessments for Minor Subdivisions

A minor subdivision is a development of five or fewer lots. Currently there is no Environmental Assessment (EA) on the first minor subdivision, but on subsequent minor subdivisions there must be an EA written.

HB 473 does not allow EAs to be written on any minor subdivision. This policy does not make sense. The environmental impacts of a development in a riparian area, or other environmentally sensitive area, should be reviewed by an EA. An EA will help local governments make better, more informed decisions about the environmental impacts of a subdivision.

Minor subdivisions must be reviewed in 35 days, so the requirement of an EA just

COMMITTEE NO. 28DATE 3-15-95BILL NO. HB-473

Against House Bill 473

Considering the pressures to develop Montana I feel that our subdivision law should remain intact. Two points in particular:

1. All citizens may be affected by a subdivision - not just the developer and those adjacent. Local governments are not necessarily infallible. Therefore I think all citizens should have the right to question and appeal.
2. The park land requirement should not be lessened. Again, as pressure to develop increases, I feel that it becomes more imp. than ever to include park areas.

Thank you

Katherine A. Brown

Represent myself as a concerned citizen

STATE BBS COPY

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PHONE NO. 444-2694

DATE 3-15-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB-472 HB 473

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Charles R. Brooks	Yellowstone County	HB 473		
Chris Imhoff	League of Women Voters of MT	HB 473		✓
Ruth (Hanson)	MT FBF	HB 472	✓	
Kirk Evenson	Trout Unlimited	HB 472	✓	
Alan Rollo	MWF	HB 472	✓	
Kathy Macfield	City of Helena	HB 473		X
Nancy McLane	Helena	HB 473		X
Lorna Frank	MT Farm Bureau	HB 472	✓	
Gordon Morris	MACo	HB 473		X
Jane Jeliński	MACo + Gallatin Co	HB 473		X
Susan Abeil	Flathead County Park Board	HB 473		X
Bob Norwood	Flathead County Parks	HB 473		X
MIKE MURPHY	MT. WATER RES. ASSN.	HB 472	X	
Blake Wordal	Lewis & Clark Co	HB 473		X

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DATE 3-15-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB-472 HB-473

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Check One

Name	Representing	Bill No.	Support	Oppose
JIM EMERSON	SELF	473		☒
Janet Ellis	MT Audubon	473		☒
Janet Ellis	MT Audubon	472	X	
BOB MARKS	SELF	473	X	
Pete Story	SELF	473	X	
Pete Story	SELF	472	X	☒
David Hull				
Lyndell Rye	Self	472	X	☒
Lyndell Rye	Self	473	X	
David N. Hull	Cty of Helena	473		X
Rin Dunn	Gallatin County Comm	473		X
Larry Gallagher	City of Kalispell	473		☒
Anne Hedges	MT IL	473		☒
John Bloomquist	Mt. Strehgarn	472 473	☒	

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DATE 3-15-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 472 HB 473

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
RICK GUSTINE	MARLS	HB 473	X	
WARREN LAIVALA	SELF / MARLS	HB 473	X	
DANIEL P. BRIEN	MARLS / SELF	HB 473	X	
Don Spivak	SELF	473		X
Richard D. Blev	SELF	473		X
Kerwin Jensen	Montana Assoc. of Planners	473		X
Jim Richard	MT Wildlife Fed	473	✓	X
Margaret Morgan	MT Assn. of Realtors	473	X	
Phil Olson	Idaho Co.	473		X
W. Whittington	Mont. Chapter Am. Fisheries Society	472	X	
Jim Nugent	City of Missoula	HB 473		X
Glenna Obie	Jefferson County	HB 473		X
Peggy Trenk	WETA: MT Chamber of Commerce	HB 473	X	
COLLIN BANGS	REALTORS	HB 473	X	

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DATE 3-15-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB-472 HB-473

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
W ^M M. SPILKEN	MT ASSN REALTOR	473	X	
Cliff Trexler	SELF	473	X	
Shetaken Olhosen	MT. Preservation Alliance	473		X
GEORGE OCHENSKI	TROUT UNLIMITED	472	X	
Larry Brown	AGS Pres. Assoc	473	X	
Glenn Marx	Gov. Puricut	472	X	
Donald Smith	Silver Club	472 473	X	
Steve Manderville	MT. Assoc Realtors	473	X	
Bob Kue	FWP	472	X	
Don Allen	MT. Wood Prod. Assoc	473	✓	
Jerry Hamlin	Self	473	✓	
Ellen Woodbury	Park County	473		X
Don Williamson	City of Hamilton	473		X
Roger Nielsen	Self	473		X

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DATE 3-15-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB-472-HB-473

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Susan Porter	G.C. Planning Board	473		X
Beth Wheatley	Self	472	X	
Ted Lange	NPRC	473		X
Katharine A. Brown	Self	473		X
John Tullis	DWRQ (Info)	382		

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MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 20, 1995,
at 3:00 PM

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: Sen. William Crismore

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 473
Executive Action: HB 338, HB 351, HB 472, HJR 24, HJR 26

HEARING ON HB 473 CONT'D.

CHAIRMAN GROSFIELD announced that because of a misunderstanding about the scheduling of the hearing on HB 473 amongst some members of the public, he would allow additional oral testimony at this time, and would accept into the record additional written testimony until the close of Executive Action on HB 473, scheduled for March 22nd.

Opponents' Testimony:

Don Spivey, representing Collective Planning Boards for Flathead County said that Section 6 deals with the review process on subdivisions. There were 3 steps in the review process where they work with a subdivider's proposal for a subdivision. That

was done before the application was accepted, and then it goes through a review process and then through a planning board. Then they go through a public hearing process.

Mr. Spivey said Section 6, subsection (5)(a) says: "Mitigation measures imposed may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat." (b) says: "Whenever feasible, mitigation should be designed to provide some benefits for the subdivider."

Mr. Spivey stated that because of the vagueness of those two statements and the way liability was defined in Section 10, that was a concern to the planning boards and the professional staff.

Mr. Spivey added that after the hearing in the House on HB 473, they had a meeting to review a 16 unit development at Big Mountain ski area. The Forest Service was concerned about wild fires, because it was in an extremely wooded area. Therefore, they were told they had to provide a secondary road. Under Section 10 of the bill, it was certain that the developer would go to court over that issue, and that would cost a lot of money. Also that proposed subdivision crosses a stream that was the watershed that feeds the domestic water supply for the city of Whitefish, so they pushed the stream set-back from 50 to 100 feet from the stream, which makes some of the land unusable.

EXHIBIT 1.

The following written testimony was submitted:

Richard Idler, Bigfork, Montana, recommended that HB 473 be tabled. EXHIBIT 2.

EXECUTIVE ACTION ON HB 338

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENTS NO. hb033804.amk AS CONTAINED IN EXHIBIT 3.

Discussion:

Alan Joscelyn, Attorney, who drafted the amendments and explained their intent to the committee members. EXHIBIT 3.

SEN. VIVIAN BROOKE asked Mr. Joscelyn what other economic impacts would be involved. He replied that the Legislature acknowledged that mining does have impacts on the lands where the mining takes place. In future challenges the courts will take a hard look at impacts that could result in scenic impacts, and impacts on animal habitat.

SEN. TOM KEATING said the statement of intent usually involves rule-making, is that the case here? He said he didn't see any

To: Senate Natural Resources Committee
Senator Lorents Grosfield, Chairman

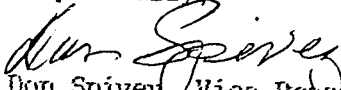
March 19, 1995
SUBJECT: HB 473

Because of time constraints in the public hearing I was unable to adequately express the views of the four Flathead County Planning Boards. I am therefore submitting this on our behalf. We believe HB. 473 is bad public policy legislation and unnecessary for the following reasons:

1. This will cost municipalities and volunteer boards much more time and money to implement than did HB 408.
2. This bill shifts "Private Property Rights" considerations in favor of the subdivider at the expense of other affected parties.
3. It adds an additional exemption that is redundant and provides a new avenue for land division without review--UNDESIRABLE.
4. The proposed Bonding changes are unnecessary, too complicated and expensive to administer.
5. The elimination of the Community Impact criteria significantly cripples a municipality's ability to use these impacts in their decision process.
6. Section 6 is too subjective, shifts the 'burden of proof' to the public and away from the subdivider where it belongs, and will make it virtually impossible to complete many reviews within the statutory 60 day window without additional staff and expense.
7. The proposed Parkland Dedication (Section 9) is complicated, difficult to administer, and often unworkable.
8. Section 10 as written is wrong and could prove disastrous to the whole subdivision review process. The fact that 'legislative immunity' is removed and damages allowed, coupled with the subjective aspects of Section 6 will be a lawyer's dream come true and a public nightmare. Also if litigation is warranted, anyone who can show cause should be able to engage.
9. Today's Subdivision Review process is a public process conducted by private citizens on behalf of other private citizens. Through that process using the law as amended in 1993, we approve 97% of all subdivisions brought for public review. We also do that faster and cheaper than any other state in the Union. If HB 473 is enacted it will become a legal process conducted by lawyers against other lawyers at public expense, and take forever.

On behalf of all the Planning Boards and Municipalities in Flathead County please TABLE HB 473.

Respectfully,



Don Spivey, Vice President
Whitefish City/County Planning Board
cc Governor Marc Racicot

R.D.I. - memo 3-17-95 cc: Office of the Governor

To: Senate Natural Resources Committee The Honorable Lorents Grosfield, Chair

Re: Bill 473

From: Richard D. Idler P.O. Box 1631 Bigfork, Mt 59911

I submitted copies of my comments on Bill 473 to all members of the Committee at the March 15th hearing, in room 325 of the Capitol Building. Although I had traveled from Bigfork to Helena to speak in opposition to the Bill, time did not permit me to do so. Further, I will be in Colorado during the week of March 19.

I am heeding Senator Grosfield's advise, therefore, and would request that my observations as represented in this memorandum be circulated to committee members prior to the executive session on this matter.

For over 25 years I have been involved in real estate and land development throughout the United States as developer, broker, and land use counselor. Since passage of the National Environmental Policy Act in 1969, I have followed the evolvement of the comprehensive land use planning process to the point where it has materially revised, in a beneficial way, not only the concept but the manner in which subdivisions, and planning and zoning districts are created and approved.

The Montana Subdivision Act of 1993, as reformed, was a major step by the State to mirror these changes and slowdown the proliferation of helter skelter subdivisions, which were occurring throughout Montana. It was with great disappointment, then, when I heard real estate agent representatives and surveyor representatives, as proponents of Bill 473, speak to the need to relax restrictions on subdivision approval, reduce the responsibilities of subdividers to assume the costs of mitigation of their impacts, and protect subdividers through provisions to seek "damages" from the taxpayers (in essence).

As a member of the Mountain States Task Force of the Urban Land Institute (a national association of developers, financiers, architects, civil engineers, planners, and government officials, dedicated to better land use practices) I can assure you that Montana's growth potential does not go unnoticed within the nation's development community. Nor is it unnoticed that Montana has about the most lenient subdivision regulations in the U.S.

Responsible subdividers and developers willingly accept the costs and expenses associated with good subdivision laws and regulations. To weaken the 1993 reforms as proposed by Bill 473, and supported by real estate agents and surveyors (I might add, to their own financial gain) will open the door to speculators, promoters, and jerry developers or subdividers, to the detriment of the natural and socio-economic resource values of the areas and communities within which they operate.

This Bill is bad legislation; I recommend that it be tabled until it can be sensibly reviewed and evaluated in the light of reality. Who is to benefit?

DATE 23.
3 80-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: _____

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Dan Spivak	SELE	473		✓
Rusty Harper	State Auditor	HB351	✓	

~
VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on March 22, 1995,
at 3:00 PM.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None
Executive Action: HB 473

{Tape: 1; Side: A}

EXECUTIVE ACTION ON HB 473

CHAIRMAN GROSFIELD announced that additional written testimony
had been submitted on HB 473, and would be included in the
hearing record.

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENTS NO. hb047302.amk
AS CONTAINED IN EXHIBIT 1.

Discussion:

REP. DICK KNOX, HD 93, Winifred explained the amendments to the committee members. He said the amendment was proposed by Susan Abell, Flathead County which states in amendment no. 5, "Funds in a park fund that exceed \$10,000 as of the effective date of this act must be used for park land acquisition and initial development. Funds in a park fund up to \$10,000 as of the effective date of this act may be used for park maintenance in accordance with a formally adopted park plan."

Vote: MOTION TO ADOPT AMENDMENT NO. hb047302.amk PASSED 7-4 ON A ROLL CALL VOTE.

Motion: SEN. FOSTER MOVED TO ADOPT AMENDMENT NO. hb047301.amk AS CONTAINED IN EXHIBIT 2.

REP. KNOX said the amendment was proposed by REP. JEANETTE MCKEE that basically says a park may not be required for a minor subdivision.

John Shontz, Montana Association of Realtors, said a minor subdivision would consist of 5 lots or less and a park to accommodate 5 lots would be pretty small. The bill says that 11% of the land had to be set aside for a park, so 11% of 5 lots would be a pretty small park for the city or county to maintain.

Vote: MOTION TO ADOPT AMENDMENT NO. hb047301.amk PASSED ON A ROLL CALL VOTE OF 7-4.

Motion: CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENTS NO. hb047305.amk AS CONTAINED IN EXHIBIT 3.

CHAIR. GROSFIELD said the Discussion Draft includes the proposed amendments. He said he thought there was a lot of misunderstanding about what the language that was struck meant. It says: "Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111."

John Shontz said that provision was the least understood provision in the bill. The Realtors Association would support removing that language from the bill. That language says that bonding was required to make sure improvements were made in subdivisions. If the bonds were lifted by the local government before the improvements were made then the individuals on the County Commission would be liable. The reason that was in there was if the bonds were lifted before improvements were made and the developer walked, the county could be liable for the cost of finishing the improvements.

SEN. MACK COLE asked Mr. Shontz for an example of where that could happen. He replied that happened in Carbon County, because of the revolving fund structure of the bonds, all the taxpayers in the county ended up paying for those bonds.

CHAIR. GROSFIELD said rather than lose a bill over an amendment he would withdraw amendment no. 1.

CHAIR. GROSFIELD asked Michael Kakuk, Environmental Quality Council to explain amendment no. 3 that says to insert: "for a major subdivision: (a)." He responded that 76-3-210 of the codes says: "Subdivisions exempted from requirement of an environmental assessment. (1) Subdivisions totally within a master planning area adopted pursuant to chapter 1 wherein zoning regulations... and a long-range development program of public work projects... have been adopted are deemed to be in the public interest and exempt from the requirement of an environmental assessment."

Substitute Motion/Vote: CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENT NO. 2 OF AMENDMENTS NO.hb0f7305.amk MOTION CARRIED UNANIMOUSLY.

Motion: CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENTS 3,4,5,6,7, and 8 OF AMENDMENTS NO.hb047305.amk.

CHAIRMAN GROSFIELD said the change was in doing an EA for a major subdivision which includes, (a), (b), (c), and (d). For a minor subdivision only (b) was included.

Mr. Shontz said no's. 3-8 refers to 76-3-608.

{Tape: 1; Side: B}

He said that would require an environmental assessment for all minor subdivisions. In Yellowstone County it would take about 90 days at a cost of approximately \$1,500 per lot. On Page 6 of the grey bill, adding impacts on local governments that they may not want to address now, including schools. In Jefferson County school districts have attempted to impose impact fees between \$11,000 to \$14,000 per lot. If the property is assessed that fee, it increases property taxes. Because local government had the flexibility now to look at subdivisions, he asked the committee to not consider that set of amendments. If additional requirements were added to local government, they would have to do an environmental assessment.

CHAIRMAN GROSFIELD said his understanding of 76-3-608 was for a review that was required for every subdivision, major or minor, and nothing in the bill changes that. Mr. Shontz suggested adding "except" as described in 76-3-609. He said the word "summary" could have the effect of local governments requiring an environmental assessment on minor subdivisions.

Mr. Kakuk suggested to add after "(2)", "except as provided in 76-3-609(3)," in amendment no. 8.

Substitute Motion/Vote: CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENTS NO. 3 - 8 OF AMENDMENTS NO.hbo47305.amk WITH THE CHANGE SUGGESTED BY MR. KAKUK. MOTION CARRIED 7-4.

Motion: CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENTS NO. 9-13 OF AMENDMENTS NO.hb047305.amk.

Substitute Motion: SEN. COLE MOVED TO STRIKE LINES 10-19, PAGE 5, AND RENUMBER THE SUBSEQUENT SECTIONS.

CHAIRMAN GROSFIELD said his amendments 9-13 addressed that section. SEN. COLE asked Mr. Kakuk what effect removing Lines 10-19 would have on the bill. He answered that removing those lines brings the bill closer to existing law. Mitigation is the heart of the subdivision review process. Currently there was no authorization or no restrictions on how mitigation was handled during the subdivision review process. It was all handled at the local level. Also mitigation had to be justified based upon substantial credible evidence.

CHAIRMAN GROSFIELD asked SEN. COLE if he had talked to anyone about the fiscal note pertaining to those amendments. SEN. COLE responded that leaving those amendments in the bill would create more expense to local governments.

SEN. VIVIAN BROOKE asked SEN. COLE why he proposed striking those amendments. He replied because of the cost to local governments. She asked Mr. Shontz what his response was to the amendments.

Mr. Shontz replied in most cases there was a negotiation process that moves forward when development was considered. Current law doesn't require that local governments mitigate a problem. He said CHAIRMAN GROSFIELD'S amendments were good amendments. If governments turn down a subdivision for some reason, the developer has a right to know why.

SEN. JEFF WELDON asked Richard Weddle, Attorney, Department of Commerce, what his comments were regarding the mitigation issue. He replied that he was involved in drafting the Subdivision and Platting Act, and had spent a lot of time with local governments in implementing subdivision laws. He also was involved in the legislative process regarding subdivision laws in several sessions.

Mr. Weddle said in the 23 years the law had been in effect, there had only been 3 or 4 cases that had reached the Supreme Court that involved the issue of approval or disapproval of a subdivision. There was little litigation regarding that issue.

There was some litigation by the Attorney General regarding the use of exemptions. He thought that the reason there was little litigation was because 97% of subdivisions were approved.

{Comments: there was so much background noise it was difficult to hear testimony or the tapes.}

SEN. FOSTER asked what the differences were in the 3 choices with the current language that was in the law, that SEN. COLE was proposing to go back to. He said the private sector was unhappy with that. If the language that was proposed in the bill was adopted, then the governmental units were unhappy. If the language proposed by CHAIRMAN GROSFIELD was adopted, the private sector and the governmental units were saying, maybe they could live with that. He said it was his belief that SEN. GROSFIELD'S amendments were the best solution.

Substitute Motion: SEN. FOSTER MOVED A SUBSTITUTE MOTION TO ADOPT AMENDMENTS 9-13 OF AMENDMENTS NO.hb047305.amk.

SEN. BROOKE asked REP. KNOX which of the 3 options he preferred. He responded that he would prefer the original language in the bill. However, he would agree to CHAIRMAN GROSFIELD'S amendments which parallel Governor Racicot's proposals.

Vote: MOTION TO ADOPT AMENDMENTS NO. 9-13. MOTION CARRIED 7-4 ON A ROLL CALL VOTE.

Motion/Vote: CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENT NO. 14 OF AMENDMENTS NO.hb047305.amk. MOTION CARRIED 7-4 ON A ROLL CALL VOTE.

CHAIRMAN GROSFIELD said that because he sensed the committee would not approve it as written, he would like to change amendment no. 17 by striking " following: "related to" Insert: "education and" , and "and schools and public", and include a comma after "roads". Mr. Shontz said that regarding water and sewer, it was easy to define what the impact on public systems would be. He said there was some concern about "roads." If there was a subdivision 8 miles out on North Montana Ave, would that developer have to pay for improvements on Montana Ave to Malfunction Junction? Where do you put an end to the road impact. There needs to be some clarification as to where that impact ends.

CHAIRMAN GROSFIELD said Page 8, Line 18 and 19 says: "The cost must reasonably reflect the expected impacts directly attributable to the subdivision." He said that language would include roads also.

Motion/Vote: CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENT NO. 17 OF AMENDMENT NO.hb047305.amk WITH THE CHANGES HE ADDRESSED. MOTION CARRIED 6-5 ON A ROLL CALL VOTE.

REP. KNOX said on Page 9, Line 5 of the grey bill, "but not" should be struck and "and" inserted.

CHAIRMAN GROSFIELD asked if there would be any impact on the bill by striking "but not" and inserting "and" in Section 8, as proposed by REP. KNOX.

Jim Richard said there were a number of things that would then be excluded such as fire prevention facilities, solid waste, etc. He thought the language, "and limited to" was too inclusive. He thought the language should say, "not limited to."

Mr. Kakuk said the next set of amendments no's 18, 20, and 23-27 change "fair market value" to "area." CHAIRMAN GROSFIELD said if "fair market value" was left in the bill, there would have to be an appraisal. SEN. BROOKE asked how a subdivider could avoid getting an appraisal.

{Tape: 2; Side: A}

CHAIRMAN GROSFIELD said that with the amendments, there would be no need for an appraisal. Mr. Shontz said then when they were talking about "areas", with the language in the amendments the local governments could specify exactly which areas would be designated as parks, and then the developer loses control over what areas are for homes and what areas are for parks. He asked if that was the committee's intent.

CHAIRMAN GROSFIELD said his amendments did not address that. Mr. Shontz said after the grey bill was drafted, there was an issue of concern that local governments could specify what lands could be parks. CHAIRMAN GROSFIELD said Page 10, Lines 11-14 say: "The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds..." He said that was the case with or without the amendments.

SEN. KEN MILLER said the bill says they must put up 11% for parks, does that mean they cannot put up more than 11%. CHAIRMAN GROSFIELD said he thought any governing body would accept a donation. Mr. Shontz said under the bill, the law says, "that the subdivider shall dedicate land equal to 11%." He said if they wanted to dedicate more land, they could. The way the bill was written they cannot require more than 11%.

Motion/Vote: CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENTS NO. 18, 20, 23, 24, 25, 26, 27 OF AMENDMENTS NO.hb047305.amk. MOTION CARRIED 7-4 ON A ROLL CALL VOTE.

CHAIRMAN GROSFIELD said amendment no. 19 inserts "recreational camping vehicles", so that the park dedication requirement would also apply to RV campgrounds. SEN. KEATING asked whether they were considered a subdivision. CHAIRMAN GROSFIELD said that under the law, they were considered a subdivision.

Mr. Richards responded that it was his understanding that by leaving recreational vehicle campgrounds out, they would not be required to comply with the park dedication requirements. He said he and his wife just constructed an RV park in White Sulphur Springs, and the park requirement not only made it an excellent park, but provided important space for children, etc.

SEN. MILLER asked if that meant that a planning board could not require a park for mobile home subdivisions. Mr. Kakuk said that a park dedication may not be required for a subdivision in which parcels are not created. It was possible to create a subdivision where you actually don't create any parcels, and then the statute does not require you to comply with the park dedication requirements, unless the subdivision provides multiple spaces for mobile homes, condominiums and with this amendment, recreational camping vehicles.

Motion/Vote: CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENT NO. 19 OF AMENDMENTS NO.hb047305.amk. MOTION CARRIED 6-4 ON A ROLL CALL VOTE.

CHAIRMAN GROSFIELD said amendments no. 21 and 22 clarify the location of the governing bodies jurisdiction with respect to parks. He didn't think the work "regional" was definitive, so the amendment clarifies that by saying "within its jurisdiction." Striking Lines 20-23 on Page 7, was just for clarification.

Mr. Shontz said amendment 21 was fine, but the stricken lines in the grey bill should be reinserted in the bill. People that buy homes in subdivisions pay the costs to maintain those parks. He recommended not to pass amendment No. 22

Motion/Vote: CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENT NO. 21 OF AMENDMENTS NO.hb047305.amk. MOTION CARRIED 6-4 ON A ROLL CALL VOTE.

CHAIRMAN GROSFIELD withdrew amendment no. 22.

Motion/Vote: CHAIRMAN GROSFIELD MOVED TO STRIKE ON PAGE 8, LINE 17 OF THE BILL, "(a)" AND STRIKE SUBSECTION (b) ON LINE 18 IN ITS ENTIRETY. MOTION CARRIED 6-4 ON A ROLL CALL VOTE.

Motion: CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENTS NO. 30, 31, AND 32 OF AMENDMENTS NO.hb047305.amk, WITH THE WORDS "Strike: "material"" ELIMINATED FROM AMENDMENT NO.31.

Mr. Shontz said in the grey bill, Lines 14-25, Page 12 after "or a", the word "private" was inserted before "landowner".

Mr. Shontz also expressed concern with Page 12, Lines 19-21. He said cities and counties have overlapping jurisdictions when it comes to subdivisions in particular, because a city has jurisdiction 4 miles beyond its boundaries for subdivisions. He said sections (c) and (d) should not be struck in the bill. In

Section (c) of the bill which says: "a political subdivision if that political subdivision can show that it is likely to suffer a significant adverse fiscal impact due to the proposed subdivision." That could include mosquito districts, SID'S, RSID districts and maybe schools. They could go to court and say they oppose the subdivision because it poses a significant adverse fiscal impact and they may want to assess development impact fees. In Jefferson County it could cost from \$11,000 to \$14,000 per lot. Potential new homeowners would be exposed to a double jeopardy tax. Therefore, in the grey bill, Lines 19 through 22 should be reinstated and Lines 23 through 25 be stricken.

CHAIRMAN GROSFIELD said **Mr. Shontz** was addressing amendment no. 32 with these concerns.

Mr. Richard responded that **Mr. Shontz** incorrectly implied that there were parts of an area where there could be an opportunity for dual jurisdiction. Under Section 76-3-601 it says: "when the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat should be submitted to and approved by the city or town governing body. When the proposed subdivision is situated entirely in an unincorporated area the preliminary plat shall be submitted to and approved by the governing body of the county." Subsection (c) say: if it lies partly in the incorporated city and partly in the county, then it has to be approved by both. He said that language could be made broader, not more restrictive.

Substitute Motion/Vote: **CHAIRMAN GROSFIELD** MOVED TO ADOPT AMENDMENT 30, INSERTING "private" BEFORE "landowner", AND AMENDMENT NO. 31 WITH "strike: "material"" DELETED. MOTION CARRIED 6-4 ON A ROLL CALL VOTE.

Motion: **CHAIRMAN GROSFIELD** MOVED TO ADOPT AMENDMENT NO. 32 OF AMENDMENTS NO.hb047305.amk.

Discussion:

SEN. FOSTER asked **CHAIRMAN GROSFIELD** why the language in amendment no. 32 was opened up to political subdivisions as opposed to the County Commissioners or the City Council. He replied that a given subdivision proposal might have a significant impact on a district. That district should have the ability to show significant adverse fiscal impact.

SEN. FOSTER asked **CHAIRMAN GROSFIELD** if there were any of those districts that were not answerable to the County Commissioners. **CHAIRMAN GROSFIELD** said that a fire district would probably be much more accountable than a school district. **REP. KNOX** said there very well could be a jurisdiction problem and believed those lines were necessary. He said he would resist expanding the bill to that extent.

Motion Withdrawn: **CHAIRMAN GROSFIELD** WITHDREW HIS MOTION ON AMENDMENT NO. 32.

Motion: CHAIRMAN GROSFIELD MOVED TO ADOPT AMENDMENT NO. hb047303.amk AS CONTAINED IN EXHIBIT 4.

CHAIRMAN GROSFIELD explained the amendment to the committee members. He said Page 8, Line 19 addresses the definition of aggrieved, that was taken from a recent Supreme Court Decision in 1993. Aggrieved means: "a person who can demonstrate a specific personal and legal interest as distinguished from a general interest." The second part says: "show that they will be injuriously affected by the decision."

Vote: MOTION TO ADOPT AMENDMENT NO. hb047303.amk CARRIED 6-4 ON A ROLL CALL VOTE.

Motion: SEN. KEATING MOVED TO CONCUR IN HB 473 AS AMENDED.

Discussion:

SEN. WELDON said he didn't think any of the amendments that were adopted would significantly affect the fiscal note. The fiscal note estimated it would cost local government almost \$350,000. The sponsor estimated it would only be \$170,000. Rob McCracken, Department of Commerce said he helped gather data for the fiscal note. He said they did a survey of counties and municipal governments to get some input on what the costs were on HB 408, which was passed in the 1993 session. In every case they used the lowest cost figures available when there was any doubt. Mr. McCracken reviewed the survey as contained in EXHIBIT 5.

{Tape: 2; Side: B}

Mr. McCracken said the fiscal note shows a fiscal impact of \$348,000.

SEN. WELDON asked if he thought the amendments would increase the fiscal impact of the bill. He said they would have to review the bill in its final form before they could see if there would be a fiscal impact.

SEN. WELDON said with 97% approval rate, he didn't see any need for the bill with the significant costs of the bill. That \$348,000 would be passed directly to the counties to rewrite the subdivision law.

SEN. KEATING asked Andy Skinner, subdivider in Lewis & Clark County to respond to that. Mr. Skinner said they failed to mention the revenue that was generated by those subdivisions. He said he had 50 units he developed and the taxes from that subdivision would pay for all of the counties put together. There also was a fee assessed when a subdivision proposal was submitted. There would be no real cost; in fact, there would be a gain to the county from development of those subdivisions.

SEN. COLE asked **Mr. Shontz** what his interpretation of those costs were. He responded that regarding those costs that the Department of Commerce stated on the mitigation section, the law requires that local government go through that already. Therefore, the bill would not add one nickel to the cost of the process. They queried 9 local governments, 6 of which absolutely opposed the legislation. The idea that the Legislature should not adopt laws because local government has to adopt rules is pretty weak. He said he seriously doubted that there would be that kind of a fiscal impact with the bill. The bill would help alleviate the economic impacts for new home owners and private citizens.

CHAIRMAN GROSFIELD asked **Mr. McCracken** if the fiscal note was generated from the introduced version of the bill. He replied that was correct. **CHAIRMAN GROSFIELD** said there were a lot of changes both in the House and the Senate to the bill. The discussion the committee had about Page 4, Lines 4-6 was because there was a tremendous misunderstanding concerning those 3 lines. It seems that the local governments that submitted the figures for the fiscal note were probably as confused as the people at the hearing. Those 3 lines may have had some of the impact on the figures in the fiscal note.

Mr. McCracken said the local governments prepared their figures based upon HB 408. He referred to the examples that came from municipalities and counties. They requested information from all counties, they didn't specifically choose certain ones. He referred to Yellowstone County in **EXHIBIT 5**. They listed their fixed costs which was estimated at \$6,500. **CHAIRMAN GROSFIELD** said he assumed that if HB 473 passes, the Department of Commerce would update their model rules and send them out to the local governments to deal with the bill. He didn't think every county out there was struggling on their own. He felt they would wait for the final word from the department.

Mr. McCracken said the Department of Commerce was not regulatory, but rather they provide information to local governments when it was requested. He said that survey was based on the model rules developed under HB 408. Something that works well for one county may not work well for another.

CHAIRMAN GROSFIELD said the way the bill had been amended he didn't think the fiscal impact would be anywhere near what the fiscal rate says.

SEN. BROOKE said she thought that those unfunded mandates still stand whether or not there were taxes generated by those subdivisions. The County Planning Department, County Commissioners, and other entities worked diligently to implement last session's subdivision reform, which was a compromise and which was to be in place to take effect so that it addressed a lot of concerns. She said in Missoula County which she represents, they had worked diligently to put those in place.

That was an unfunded mandate last time. They don't have the tax dollars now to stay ahead of the curve, if they have to go through another revision. She questioned that housing costs will go down as promised if the bill passes. SEN. BROOKE said they would have a very stressed out, very angry county government if they have to go through another major revision. She didn't think there was a need for the bill at this time.

Vote: MOTION TO CONCUR IN HB 473 AS AMENDED, CARRIED 7-4 ON A ROLL CALL VOTE.

CHAIRMAN GROSFIELD indicated that he would talk to members of the committee and the sponsor to try to find someone to carry the bill on the floor. If he couldn't find anyone, he would feel obligated as Chairman to carry it himself.

{Comments: The following additional written testimony has been submitted for the record by those who couldn't attend the hearing on HB 473.}

Dave Cogley, Wildwood Homes testimony addressed the amendments to HB 473. EXHIBIT 6.

Park County opposes HB 473. EXHIBIT 7.

Members of the Ravalli County Planning Board oppose HB 473 EXHIBIT 8.

Kirk Thompson, Ravalli County, opposes HB 473. EXHIBIT 9.

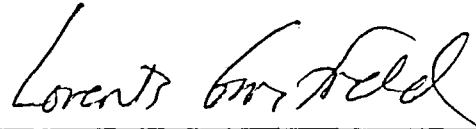
Mame Flowers, Whitefish, Montana, opposes HB 473. EXHIBIT 10.

Park County Planning Board, opposes HB 473. EXHIBIT 11.

{Comments: the meeting was recorded on 2, 2 hour tapes.}

ADJOURNMENT

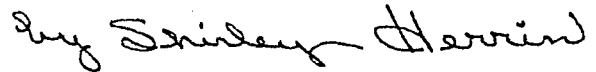
Adjournment: 6:30 PM



LORENTS GROSFIELD, Chairman



THEDA ROSSBERG, Secretary



LG/TR

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SENATE STANDING COMMITTEE REPORT

Page 1 of 4
March 23, 1995

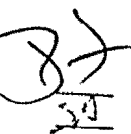
MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration HB 473 (third reading copy -- blue), respectfully report that HB 473 be amended as follows and as so amended be concurred in.

Signed: 
Senator Lorents Grosfield, Chair

That such amendments read:

1. Title, line 9.
Strike: second "AND"
2. Title, line 10.
Following: "MCA"
Insert: "; AND PROVIDING AN APPLICABILITY DATE"
3. Page 4, line 9.
Strike: "An"
Insert: "When required, the"
4. Page 4, line 10.
Strike: "for a major subdivision"
5. Page 4, line 11.
Following: "(1)"
Insert: "for a major subdivision: (a)"
6. Page 4, line 14.
Strike: "(2)"
Insert: "(b)"
7. Page 4, line 17.
Strike: "(3)"
Insert: "(c)"
8. Page 4, line 19.
Following: "~~protection;~~"
Insert: "a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and
(d)"
9. Page 4, line 20.

 Amd. Coord.
Sec. of Senate

 GROSFIELD
Senator Carrying Bill

671104SC.SRF

Strike: "."

Insert: "; (2) except as provided in 76-3-609(3), for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608."

10. Page 5, line 10.

Following: "subdivision to"

Insert: "reasonably"

11. Page 5, line 12.

Strike: ", based" through "evidence,"

Following: "justify the"

Insert: "reasonable"

12. Page 5, line 14.

Following: "(5)"

Insert: "(a)"

13. Page 5, lines 15 and 16.

Strike: "must" on line 15 through "imposed" on line 16

14. Page 5, line 19.

Strike: "Whenever feasible,"

Insert: "When requiring"

Following: "mitigation"

Strike: "should" through "for"

Insert: "under subsection (4), a governing body shall consult with"

Following: "subdivider"

Insert: "and shall give due weight and consideration to the expressed preference of the subdivider"

15. Page 6, line 10.

Following: "~~shall~~"

Insert: "and preparing an environmental assessment"

16. Page 6, line 17.

Following: second "public"

Insert: "roads,"

17. Page 6, lines 23, 25, 27, and 29.

Strike: "fair market value"

Insert: "area"

18. Page 7.

Following: line 7

Insert: "(a) a minor subdivision;"

Renumber: subsequent subsections

19. Page 7, line 11.

Following: "for"

Insert: "recreational camping vehicles,"

Following: "homes"

Insert: ", "

20. Page 7, line 16.

Following: "both."

Insert: "When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation."

21. Page 7, line 17.

Strike: "Except" through "subsection"

Insert: "In accordance with the provisions of subsections"

Following: "(5) (b)"

Insert: "and (5) (c)"

22. Page 7, line 19.

Strike: "regional"

Insert: ", within its jurisdiction,"

23. Page 7.

Following: line 24

Insert: "(c) The governing body may not use more than 50% of the dedicated money for park maintenance."

24. Page 7, line 29.

Strike: "fair market value"

Insert: "area"

25. Page 7, line 30.

Strike: "value"

Insert: "area"

26. Page 8, lines 3 and 6.

Strike: "fair market value"

Insert: "area"

27. Page 8, lines 4 and 7.

Strike: "value"

Insert: "area"

28. Page 8, line 11.

Strike: "\"fair market value\""

Insert: "\"cash donation\""

Following: "is the"
Insert: "fair market"

29. Page 8, lines 16 through 18.
Strike: ":" on line 16 through "(a)" on line 17
Strike: "; or" on line 17 through "authority" on line 18

30. Page 8, line 25.
Following: "subdivision"
Insert: "or a private landowner with property within the county
or municipality where the subdivision is proposed"

31. Page 8, line 26.
Strike: "adjoining"

32. Page 8.
Following: line 28
Insert: "(4) For the purposes of this section, "aggrieved" means
a person that can demonstrate a specific personal and legal
interest, as distinguished from a general interest, that has
been or is to likely to be specially and injuriously
affected by the decision."

33. Page 9.
Following: line 5
Insert: "NEW SECTION. Section 13. Applicability. Funds in a
park fund that exceed \$10,000 as of [the effective date of
this act] must be used for park land acquisition and initial
development. Funds in a park fund up to \$10,000 as of [the
effective date of this act] may be used for park maintenance
in accordance with a formally adopted park plan."

-END-

Amendments to House Bill No. 473 NO. HB 473
Third Reading Copy

For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 15, 1995

1. Title, line 9.
Strike: second "AND"

2. Title, line 10.
Following: "MCA"
Insert: "; AND PROVIDING AN APPLICABILITY DATE"

3. Page 7, line 17.
Strike: "Except" through "subsection"
Insert: "In accordance with the provisions of subsections"
Following: "(5)(b)"
Insert: "and (5)(c)"

4. Page 7.
Following: line 24
Insert: "(c) The governing body may not use more than 50% of the
dedicated money for park maintenance."

5. Page 9.
Following: line 5
Insert: "NEW SECTION. Section 13. Applicability. Funds in a
park fund that exceed \$10,000 as of [the effective date of
this act] must be used for park land acquisition and initial
development. Funds in a park fund up to \$10,000 as of [the
effective date of this act] may be used for park maintenance
in accordance with a formally adopted park plan."

Amendments to House Bill No. 473
Third Reading Copy

Requested by Rep. McGee
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 14, 1995

1. Page 7.

Following: line 7

Insert: "(a) a minor subdivision;"

Renumber: subsequent subsections

Amendments to House Bill No. 473
Third Reading CopyRequested by Sen. Grosfield
For the Committee on Natural ResourcesPrepared by Michael S. Kakuk
March 20, 1995

1. Page 4, lines 4 through 6.
Strike: subsection (3) in its entirety
2. Page 4, line 9.
Strike: "An"
Insert: "When required, the"
3. Page 4, line 10.
Strike: "for a major subdivision"
4. Page 4, line 11.
Following: "(1)"
Insert: "for a major subdivision: (a)"
5. Page 4, line 14.
Strike: "(2)"
Insert: "(b)"
6. Page 4, line 17.
Strike: "(3)"
Insert: "(c)"
7. Page 4, line 19.
Following: "~~protection,~~"
Insert: "a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and
(d)"
8. Page 4, line 20.
Strike: "."
Insert: "; (2) for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608." *except as 76-3-609 provided in*
9. Page 5, line 10.
Following: "subdivision to"
Insert: "reasonably"
10. Page 5, line 12.
Strike: ", based" through "evidence,"
Following: "justify the"
Insert: "reasonable"

11. Page 5, line 14.
Following: "(5)"
Insert: "(a)"

12. Page 5, lines 15 and 16.
Strike: "must" on line 15 through "imposed" on line 16

13. Page 5, line 19.
Strike: "Whenever feasible,"
Insert: "When requiring"
Following: "mitigation"
Strike: "should" through "for"
Insert: "under subsection (4), a governing body shall consult
with"
Following: "subdivider"
Insert: "and shall give due weight and consideration to the
expressed preference of the subdivider"

14. Page 6, line 10.
Following: "~~shall~~"
Insert: "and preparing an environmental assessment"

15. Page 6, line 15.
Following: "extension"
Insert: "or enlargement"

16. Page 6, line 16.
Following: "extending"
Insert: "or enlarging"

17. Page 6, line 17.
Following: "~~related to~~"
Insert: "~~education and~~"
Following: second "public"
Insert: "roads, ~~and schools and public~~"

18. Page 6, lines 23, 25, 27, and 29.
Strike: "fair market value"
Insert: "area"

19. Page 7, line 11.
Following: "for"
Insert: "recreational camping vehicles,"
Following: "homes"
Insert: " , "

20. Page 7, line 16.
Following: "both."
Insert: "When a combination of land donation and cash donation is
required, the cash donation may not exceed the proportional
amount not covered by the land donation."

21. Page 7, line 19.
Strike: "regional"
Insert: " , within its jurisdiction, "

22. Page 7, lines 20 through 23.

Strike: ":" on line 20 through "(ii)" on line 23

23. Page 7, line 29.

Strike: "fair market value"

Insert: "area"

24. Page 7, line 30.

Strike: "value"

Insert: "area"

25. Page 8, lines 3 and 6.

Strike: "fair market value"

Insert: "area"

26. Page 8, lines 4 and 7.

Strike: "value"

Insert: "area"

27. Page 8, line 11.

Strike: ""fair market value""

Insert: ""cash donation""

Following: "is the"

Insert: "fair market"

28. Page 8, lines 13 through 19.

Strike: "A" on line 13 through "(2)" on line 19

Strike: "(3)" on line 19

Insert: "(2)"

29. Page 8, line 23.

Strike: "(3)"

Insert: "(2)"

Strike: "(2)"

Insert: "(1)"

30. Page 8, line 25.

Following: "subdivision" *Private*

Insert: "or a landowner with property within the county or municipality where the subdivision is proposed"

31. Page 8, line 26.

~~Strike: "material"~~ *elim*

Strike: "adjoining"

Following: ";

Insert: "or"

32. Page 8, lines 27 and 28.

Strike: subsections (3)(c) and (3)(d) in their entirety

Insert: "(c) a political subdivision if that political subdivision can show that it is likely to suffer a significant adverse fiscal impact because of the proposed subdivision."

Amendments to House Bill No. 473
Third Reading Copy

Requested by Sen. Grosfield
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
March 22, 1995

LEGISLATIVE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 3-22-95
BILL NO. HB-473

1. Page 8.

Following: line 28

Insert: "(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, that has been or is to likely to be specially and injuriously affected by the decision."

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising local subdivision laws by modifying environmental assessment requirements, bonding requirements for public improvements, park dedication requirements, establishing payment criteria for the extension of capital facilities, establishing mitigation guidelines and providing for lawsuits against local governments.

ASSUMPTIONS:

1. The proposed legislation would become effective October 1, 1995.
2. All of the 56 county governments and all 128 municipal governments that have local subdivision regulations would revise them.
3. As directed by state law, the Department of Commerce (DOC) provides advisory technical assistance to counties, municipalities, business persons, developers, land surveyors, and citizens, to help them understand and comply with planning and development statutes (including subdivision statutes).
4. Estimated DOC costs are based upon actual costs incurred by the DOC in FY94 and FY95 when the subdivision law was substantially changed by the 1993 Legislature. DOC projected costs for HB473 include updating two advisory educational publications and conducting eight educational workshops across the state.
6. The proposed legislation amends only the Montana Subdivision and Platting Act, not the Sanitation Subdivision Act administered by the Department of Health and Environmental Sciences.

FISCAL IMPACT:

Expenditures:

Department of Commerce:	FY96	FY97
	Difference	Difference
Operating Expenses	16,000	16,000

Funding:

General Fund (01)	16,000	16,000
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Additional costs for the 56 county governments (\$147,000) and 128 municipal governments (\$201,000) are estimated to total \$348,000. These estimates are derived from approximate costs incurred by county and municipal governments to update subdivision regulations passed by the 1993 Legislature.

TECHNICAL NOTES:

Section 6 of the proposed legislation (page 5, line 19) states, "Whenever feasible, mitigation should be designed to provide some benefits for the subdivider." There is no definition of the term "benefits". The term could cause confusion in implementing the legislation.

David Lewis 2-15-95
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

DICK KNOX, PRIMARY SPONSOR DATE

Fiscal Note for HB0473, as introduced

HB 473

ESTIMATED COST TO LOCAL GOVERNMENTS TO IMPLEMENT HB473

COUNTY GOVERNMENTS

	Yellowstone Co.	Flathead Co.	Average	Six Largest Counties
Staff Time	\$4,750	\$2,840		
Printing	\$800	\$200		
Other*	\$950	\$120		
Total	\$6,500	\$3,100	\$4,800	\$28,800

	Lincoln Co.	Park Co.	Average	Remaining Fifty Counties
Staff Time	\$1,000	\$2,125		
Printing	\$650	\$638		
Other*	\$250	\$68		
Total	\$1,900	\$2,831	\$2,365	\$118,250

	All Counties
Total	\$147,050

MUNICIPAL GOVERNMENTS

	Bozeman	Billings	Average	Seven Largest Municipalities
Staff Time	\$960			
Printing	\$1,700			
Other*	\$180			
Total	\$2,840	\$3,000	\$2,840**	\$19,880

	Columbus	Hamilton	Red Lodge	Average	Remaining 121 Municipalities
Staff Time	\$1,750	\$911			
Printing	\$500	\$500			
Other*	\$250	\$290			
Total	\$2,500	\$1,701	\$1,500	\$1,500***	\$181,500

	All Municipalities
Total	\$201,380

ALL LOCAL GOVERNMENTS

	All Local Governments
Total	\$348,430

- * "Other" category includes the following types of miscellaneous costs: legal notices, public hearings, training, copying, etc.
- ** The lower number was used as the average rather than averaging the two municipalities together.
- *** The true average is \$1,900 for small municipalities. This seemed somewhat high given the number of smaller municipalities. Therefore, a smaller amount (\$1,500) was estimated.

<I:\ctap\hb473b, updated 2/16/95)>

HB 473

SENATE NATURAL RESOURCES

EXHIBIT NO. 5

DATE 3-22-95

DOC NO. HB-473

ADDITIONAL EXPENDITURES FOR DOC
(Operating category only, figures cited are for Biennium.
Assume 50% of each line item for FY 96 and 50% for FY 97)

Contract Services (Consultant)

*Produce Advisory Manual for Subdiv. Admin. (155 hours x \$45/hour)	\$ 7,000
*Produce Advisory Model Subdivision Regs. (200 hour x \$45/hour)	\$ 9,000
Subtotal	\$16,000

Printing

*Advisory Admin. Manual (300 copies)	\$ 6,000
*Advisory Model Subdiv. Regulations (600 copies)	\$ 3,900
Subtotal	\$ 9,900

Mailing Costs

*Postage (Manual 300 copies x \$2.97 = \$891) (Model 600 copies x \$2.63 = \$1,578)	\$ 2,469
*Shipping (Manual, 300 copies x \$1.80 = \$540) (Model, 600 copies x \$.70 = \$420)	960
Subtotal	\$ 3,429

Travel (Put on Educational Workshops)

\$1,188/year (4 workshops/year 8 total for biennium)	\$ 2,376
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Total	\$31,705
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**TRAVEL COSTS BY THE COMMUNITY TECHNICAL ASSISTANCE PROGRAM
TO PROVIDE TECHNICAL ASSISTANCE TO LOCAL GOVERNMENTS TO
IMPLEMENT HB473**

1. Mileage costs:

Based on a total of 1,702 miles (round trip mileage to: Missoula, Great Falls, Billings, Glendive as an example) and \$.2595/mile (rate for vans) the total mileage cost is: **\$441.67**

2. Meals & Lodging costs:

A. Lodging	\$31.20/ night/ per person
B. Meals	<u>\$15.50/ day/ per person</u>
C. Total	\$46.70/ day/ per person

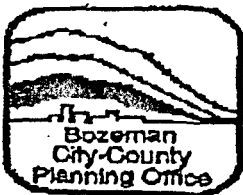
Assuming three staff per workshop and two days per workshop:

A. Lodging	\$93.60
B. Meals	<u>\$93.00</u>
C. Total	\$186.60/ workshop

3. Total Costs:

The cost for providing technical assistance to local governments assuming four workshops using a van, three people and an average of two days per trip, the total cost of providing four workshops is:

Vehicle	\$441.67
Meals & Lodging	<u>\$746.40</u>
Total	\$1,188.07



**BOZEMAN
CITY-COUNTY
PLANNING OFFICE**

35 NORTH BOZEMAN AVENUE
P.O. BOX 640, BOZEMAN, MONTANA 597
PHONE: (406) 582-2300 FAX: (406) 582-2363

Post-It™ brand fax transmittal memo 7671		# of pages 24	
To	Gavin Anderson	From	Andy Effie
Co.	DOI	Co.	BCCPB
Dept.		Phone #	582-2-2360
Fax #	1-406-582-2363	Fax #	RESOURCES

MEMORANDUM

EXHIBIT NO. 5
DATE 3-22-95

FULL NO. 17B-473

TO: GAVIN ANDERSON, DEPARTMENT OF COMMERCE
FROM: ANDREW C. REPLE, BOZEMAN CITY COUNTY PLANNING DIRECTOR *AR*
DATE: FEBRUARY 10, 1995
RE: SUBDIVISION AMENDMENT COSTS

Estimated costs to the City of Bozeman to enact changes to local subdivision regulations mandated by the passage of House Bill 108 can be summarized as follows:

Staff time to draft mandated changes, prepare public notices, prepare hearing agendas, make presentations at hearings, prepare minutes and findings, prepare ordinance, codify...24 hrs* @ \$40/hr**.....	\$ 960
Advertising.....	180
Codification (publication in Munic. Code).....	1,700
TOTAL.....	\$2,840

Gallatin County incurred similar costs to enact the mandated changes as well.

I would anticipate comparable expenses to enact changes that may be mandated by passage of House Bill 473. I am quite certain that local governments and planning boards across the state would view such requirements as an unfunded mandate, unless the state is willing to provide funds to local governments to enact such changes.

Please let me know if you have any questions or need any additional information.

*Salaried staff time only -- does not include substantial hours spent by planning board members and commissioners in public hearings and meetings related to these changes.

**\$40/hour - rough average hourly wage of all staff involved in amendment process, from clerical to city attorney.

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 3-22-95
BILL NO. HB-473

**CARBON COUNTY/RED LODGE
ESTIMATED COSTS TO IMPLEMENT 1993 SUB. LAW**

* Carbon County (Including All Cities and Towns)	\$5,000
* City of Red Lodge (Estimated)	\$1,500

Mike Fahley

**CITY OF BILLINGS
ESTIMATED COSTS OF IMPLEMENTING
1993 SUBDIVISION LAW**

APPROXIMATELY

\$3,000

**(Includes professional staff
time, clerical staff time,
telephone charges, postage,
office supplies, copy charges,
printing, legal ads)**

**Bill Arnold
2/11/1995**

**COSTS TO UPDATE SUBDIVISION REGULATIONS
(1993) FOR
THE CITY OF HAMILTON
DON WILLIAMSON, CITY MANAGER
2/11/1995**

1. STAFF TIME

* Don Williamson	
Initial draft (15 hrs x \$21/hr)	\$315.00
Questions (4 hrs x \$21/hr)	84.00
Subdivision Training Workshop (8 hrs x \$21/hr)	168.00
* Secretary, Typing (4 hrs x \$11/hr)	44.00
* City Attorney, Legal Questions (4 hrs x \$45/hr)	180.00
* New City Planner, Training Workshop (8 hrs x \$15 hr)	120.00

2. PRINTING

* Print Regulations	500.00
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3. TRAVEL COSTS, SUBDIV. TRAINING WORKSHOP

* Motel, Meals, Gas	140.00
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4. MISCELLANEOUS

* Public Notice (\$40), mailings, postage, etc.	150.00
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TOTAL	\$1,701.00
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SENATE NATURAL RESOURCES

EXHIBIT NO. 5

DATE 3-22-95

BILL NO. HB 473

TOWN OF COLUMBUS
COSTS TO IMPLEMENT 1993 SUBDIVISION LAW
(ESTIMATED)

Staff Time	\$1,750
Print new regulations	500
Other costs	<u>250</u>
Total	\$2,500

Beaudry

Costs Estimated for Implementation of 1993 Amendment to HB 473

Montana Subdivision & Platting Act (MSPA)

Yellowstone County

(Bill Arnold)

The following list provides an estimate of costs incurred to implement the amendments to the Montana Subdivision & Platting Act (MSPA) enacted by the 1993 Montana legislature.

Professional Staff Time	\$4,000 -
Clerical Staff Time	750 ✓
Telephone Charges	150
Postage	150
Office Supplies	250
Copy Charges	250
Printing	800
Legal Ads	150

ESTIMATED TOTAL \$6,500

Since adoption of the 1993 amendments, staff time has increased significantly as related to the subdivision review process due to the number of land divisions that now require review. This imposes an additional indirect cost to local government in that staff time on other important issues has had to be decreased.

House Bill #473 would, due to its content, effectively double the costs listed above. Local governments would have to undergo the same process as two years ago in order to implement the new law. The same type of costs would be incurred, only two years later, those costs increase simply due to inflationary factors. Beyond that, local government's cost for subdivision review would increase due to the content of H.B. #473. This equates to an unfunded mandate to both cities and counties.

SENATE NATURAL RESOURCES

IMPLEMENTATION OF NEW SUBDIVISION REGULATIONS

EXHIBIT NO. 5

DATE 3-22-95

BILL NO. H B-473

SUBDIVISION REGULATION REVISION COPIES

County Staff-----	\$50.00
3 Planning Boards-----	\$150.00
General public-----	\$500.00
Copier Toner-----	\$50.00

PUBLIC HEARING NOTICES-----\$50.00

INFORMATIONAL HANDOUTS, LETTERS,
CORRESPONDENCE, AND ARTICLES-----\$250.00

STAFF TIME-----\$1,000.00

TOTAL COST \$2,050.00

LINCOLN COUNTY
Ken Peterson

02/10/95 12:38

1 408 222 6728

PARK COUNTY

002

SENATE NATURAL RESOURCES
EXHIBIT NO. 5

COST ESTIMATES TO REWRITE SUBDIVISION LEGISLATION
PARK COUNTY (HB 408, (913)

DATE 9-22-95
BILL NO. HB-477

Staff Time 100 hours @ \$13.00/hour = \$1,300

Four public hearing notices @ \$16.00 = \$68.00

County Commissioners Review and Hearings = 25 Hours @ \$11.00/hr(3)
= \$825.00

Printing Costs \$.07/page x 114 pages x 80 copies =
\$638.00

Total = \$3032.00

This is just a rough estimate. It probably is a little more, but this is the closest I can come. We charge for the regulations after they are passed, but draft copies are given to the public free of charge.



Flathead Regional Development Office

723 5th Avenue East - Room 414
Kalispell, Montana 59901

SENATE NATURAL RESOURCES

EXHIBIT NO. 5

Phone: (406) 758-5780

Fax: (406) 758-5781

DATE 3-22-95

BILL NO. HB-473

DATE: GAVIN ANDERSON

FAX TO #: 442-4482 444 2903

NAME: _____

LOCATION: D.O.C.

PHONE: _____

TOTAL PAGES (INCLUDING COVER SHEET) 2

FAX FROM: TOM JENTZ

DEPARTMENT: FRDO, KALISPELL, MT

PHONE: 758-5980

MESSAGE

FIGURE #4200 at a min. to implent

SUB. REGS.

Tom

Providing Community Planning Assistance To:

• Flathead County • City of Columbia Falls • City of Kalispell • City of Whitefish •

DOES NOT INCLUDE PLANNING BOARD TIME - 9 members + SECRETARY

DOES NOT INCLUDE COUNTY COMMISSION TIME + SUPPORT (3 COM. 1 sec., 1 ATORH)
SENATE NATURAL RESOURCES

(ADD \$1000 extraneous cost. EXHIBIT NO. 5

FLATHEAD

COUNTY

DATE 3-22-95
BILL NO. 173-423

FLATHEAD COUNTY EXPENSE UPDATING COUNTY SUBDIVISION REGULATIONS

1993 -1994

100 HOURS -	RE-DRAFT OF SUB. REGULATIONS
2 HOURS -	PLANNING BOARD WORK SESSION
\$20 -	LEGAL NOTICE
20 HRS. -	STAFF EDITING/WORK
1 HR. -	PLANNING BOARD PUBLIC HEARING
3 HR. -	PUBLIC OPEN HOUSE
1 HR. -	COUNTY COMMISSION STUDY SESSION
\$20 -	LEGAL NOTICE
5 HR -	COUNTY COMMISSION PUBLIC HEARING
\$40 -	COMMISSIONER RESOLUTION/PUBLICATION
5 HRS -	ADDITIONAL STUDY SESSION WITH COUNTY HEALTH DEPT. RE: SANITATION ON 20 ACRE OR LARGER TRACTS
\$200 -	REPRINTING OF REGULATIONS
5 HRS -	REDRAFT OF SUBDIVISION EVASION CRITERIA
\$40 -	COUNTY COMMISSIONER PUBLIC HEARING\RESOLUTION\PUBLISHING
142 HRS -	TOTAL STAFF HOURS (@\$20/HR)
320 -	TOTAL LEGAL AND PUBLISHING COSTS

160

TOTAL

[Handwritten signatures and notes]
County Comm. time

HB 473 FISCAL NOTE: DEPARTMENT OF COMMERCE ASSUMPTIONS.
WORKING NOTES, 2/11/95

1. The proposed legislation would become effective October 1, 1995.
2. All 56 county and 128 municipal governments would need to revise their local subdivision regulations to reflect the changes required by HB 473. Note that all municipalities and counties are required to adopt subdivision regulations under 76-3-501, MCA (current law).
3. As directed by state law, the Department of Commerce (DOC) provides advisory technical assistance to counties, municipalities, business persons, developers, land surveyors, attorneys, and citizens, to help them understand and comply with planning and development statutes (including subdivision statutes). Thus, DOC would provide assistance to these clients upon their request for assistance with HB 473.
4. Cost calculation assumptions for costs to DOC. Estimated DOC costs are based upon actual costs incurred by DOC in FY94 and FY95 when the subdivision law was substantially changed by the 1993 Legislature (HB 408). DOC estimated costs for HB 473 include updating two advisory educational publications and conducting eight educational workshops across the state. These activities enable DOC to carry out the statutory requirement to provide technical assistance.
5. Cost calculation assumptions for municipal and county governments. Historical data from local governments to implement HB 408, which was passed by the 1993 Legislature, was used as the basis for estimating costs to implement HB 473. HB 473 will cost city and county governments at least as much as HB 408. For both HB 408 and HB 473, certain activities in revising local regulations would be identical. For both bills, local governments would have to study the new laws, write draft regulations, hold public hearings, revise and fine tune the drafts, adopt final regulations, and print copies of both draft and final regulations.

In addition, HB 473 will cost local governments at least as much as HB 408 because HB 473 would change the mechanics of the subdivision review process. In contrast, HB 408 basically just expanded the scope (types and sizes of land parcels subject to subdivision regulation). As a result, HB 408 was much simpler to implement both legally and technically, because it did not change the basic mechanics of the subdivision review process.

One example of how HB 473 fundamentally changes the mechanics of the subdivision review process is the new "mitigation" procedure the bill would establish. First of all, note that the HB 473 "mitigation language" (Section 6, page 5, line 11 of the bill) applies to and changes the entire subdivision review process

(mechanics of review).

Secondly, HB 473 would shift the burden of proof to the local governing body to justify the mitigation measures proposed based on "substantial credible evidence." (Section 6, page 5, line 12 of the bill). According to DOC legal staff, there is no other regulatory framework in state law that requires this type of very stringent evidence. There are no known models in terms of other land use laws.

Thirdly, there is no definition of "benefits to the subdivider" in terms of designing the mitigation process and how this would work in practice (Section 6, page 5, line 19 of HB 473).

Fourthly, HB 473 enables subdividers and a limited number of other parties to sue local governments for damages (in cash) if the subdivider or other parties disagree with the mitigation (or other conditions or measures) proposed by the local government. This means drafting of the new local regulations would need to include a comprehensive and stringent examination of every part and detail of the subdivision review process and would require a great deal of new legal interpretation. (Section 10, page 8, line 15 of HB 473 establishes the ability to sue for damages.)

To summarize, the mitigation language is only one example of a legal and technical issue which would change the fundamental mechanics of subdivision review.

Therefore, it is very likely that HB 473 will cost more than HB 408 because HB 473 substantially changes the mechanics of the review process, including the legal and technical issues mentioned previously. DOC believes HB 473 would possibly cost 30% to 40% more than HB 408 due to these facts. The 30% to 40% additional costs were not factored into the fiscal note because DOC, as a matter of policy and consistent with DOC's past practice in preparing fiscal notes, used extremely conservative figures based on actual historically documented costs from information available from local governments for the implementation of HB 408. The use of HB 408 as the basis to estimate costs for HB 473 is very financially conservative.

Methodology for Cost Calculations. The total time allowed the DOC Local Government Assistance Division fiscal note preparers was 10 working hours -- not the 24 hours or 3 working days usually allowed. Data was not available from local governments "off the shelf." Instead, new data had to be collected and analyzed by DOC. Therefore, we had to quickly design a balanced methodology that would still allow DOC to meet the brief deadline for the fiscal note submission.

A phone survey of municipal and county governments was conducted by DOC to collect costs on implementing HB 408 as the basis for estimating costs for HB 473.

Costs to municipalities and costs to counties were computed separately. Costs were computed separately for the larger municipalities and the rest of the municipalities (smaller towns). Similarly, costs for counties were broken down into larger counties and the rest of the state (smaller counties). Generally, averages of these 4 categories were used to estimate costs. In a couple of cases, the raw averages appeared to be slightly high; therefore, DOC used the lowest figures available, as opposed to the raw averages. The final cumulative figure, \$348,430, reflects a conservative estimate based on real world documented costs submitted to DOC directly from local governments. The estimate is a minimum cost estimate.

The following cost categories were included in the fiscal note estimate:

1. Local staff time (hourly cost) required to write draft regulations for public review, resolve questions, fine tune the draft, and adopt final regulations was included. The cost of staff time was taken from the figures submitted by local governments in the phone survey.
2. Printing costs for new regulations (including drafts for public comment, and final versions for the public, land developers, planning board, and local government officials and staff) was included. The cost for printing was taken from the figures submitted by local governments in the phone survey.
3. Other directly related costs were included such as publication of the legal notices required by state law to inform the public, copying, etc. These figures were obtained from the figures submitted by the local governments in the phone survey.

The following cost categories were not included in the fiscal note:

1. Costs of travel to receive training on the new law and regulations for planning board members, planners, and other city and county officials were not included. Local governments did not have enough time, given the required time-frame for completing the fiscal note, to quantify the costs. (The City of Hamilton was the one exception. Hamilton's costs were included, because the figures were documented and available).
2. The estimated costs to local governments for hiring planning consultants or land use lawyers on a temporary contract basis were not included. Since they do not generally have professional staff with this specialized experience, many rural counties and small towns would need to contract for help from a planning consultant at about \$40/hour and/or a land use lawyer at about \$50-\$90/hour. It is difficult to estimate cumulative

costs statewide since these contractual decisions are individual decisions which are unique for each municipality or county. It would be hard to predict these costs without the time to analyze each jurisdiction on an individual basis.

3. The projected costs for the payment of cash damages resulting from lawsuits by parties (such as subdividers) appealing the governmental body's decision on a subdivision were not included. The current law does not allow cash damages to parties which prevail upon appealing a local government decision to a court. HB 473 authorizes cash damages. It is difficult to estimate how many lawsuits would be filed, the number of judgments which would be made against local governments, the amount of the cash damages awarded by courts, how much of the new costs would be paid by municipalities and counties with their existing budgets, or how much of the new costs would have to be imposed on the local taxpayers by higher taxes (judgement mill levies).
4. Inflation was not factored in. HB 408 became fully effective on 10/1/93. HB 473 would become effective on 10/1/95. The 1993 costs could be adjusted upwards by the Consumer Price Index; however, given the short period to prepare the fiscal note, there was not time to carefully calculate the inflation factor.
5. The additional costs (possibly 30% to 40% more overall) that HB 473 would cost local governments to implement compared to HB 408 were not included. HB 473 would cost more than HB 408 to implement because it substantially changes the mechanics of the review process and involves major legal and technical questions and interpretations to design new regulations to incorporate major changes in the mechanics of subdivision review, such as the new comprehensive mitigation procedure and new cash damages procedure. These costs were not factored into the fiscal note because there was not adequate time available to analyze these new costs in adequate detail.

SUMMARY. DOC has taken our responsibility to prepare an accurate fiscal note very seriously. We used hard figures that could be backed up with historical evidence. The data used came directly from local governments. According to the DOC Fiscal Note Coordinator who double checked the fiscal note, the note prepared for HB 473 was one the most sound fiscal notes prepared by DOC. Thus, DOC believes the figures in the fiscal note -- including the \$348,430 estimated cost to municipalities and counties and estimated cost to DOC of \$32,000 -- to be a reasonable estimate of the costs to implement HB 473.

<l:hb473>

WILDWOOD Homes

1 Prickly Pear Dr. • Clancy, MT 59634 • (406) 442-3176

March 22, 1995

Senate Natural Resources Committee
Montana State Legislature
Helena, Montana

SENATE NATURAL RESOURCES

EXHIBIT NO. 10

DATE 3-22-95

BILL NO. HP-473

Re: Senator Grosfield's amendments to HB 473

Dear Senator Grosfield and Committee Members:

My name is Dave Cogley and I am a homebuilder in the Clancy and Helena area. I speak for myself and for the Montana Building Industry Association as chairman of its Legislative Affairs Committee. I am addressing only the proposed amendments to HB 473 which allow a local government reviewing a subdivision proposal to require the developer to pay or guarantee payment for part or all costs of extending or enlarging school facilities deemed necessary as a result of the development. Development fees, or impact fees, are not new with respect to roads and water and sewer facilities, and past litigation has now clarified requirements concerning fair assessment of these kinds of fees in Montana. (See Lechner v. City of Billings, 244 Mont. 195, 797 P.2d 191 (1990) and attached analysis of legal issues involved in imposing these fees.) But new issues are raised when these fees are applied to school facilities. Very briefly, some of those issues are as follows.

1. The state has a constitutional obligation to provide equal educational opportunity for each of its citizens. Article X, section 1(1), Montana Constitution. Also, the state must fund in an equitable manner its share of the cost of the elementary and secondary public school system. Article X, section 1(3), Montana Constitution. These requirements reflect the policy that a public school system benefits society generally, should be available equally to all, and should be paid for by society as a whole, not by the individual users of the public school system. In stark contrast, these proposed amendments place the cost of new required facilities squarely on those individuals and families buying parcels in the new subdivision. And it does so without regard to whether those people and families individually will even use the school facilities for which they are forced to pay. Because of the wide latitude of discretion these amendments give to local governments to impose either no fees, or fees for part or all of the necessary capital improvements, it is inevitable that these kinds of fees will not be equally applied, and will result not only in disequalizing school funding even more than at present, but will promote unequal educational opportunity between communities as well.

2. The U.S. Supreme Court, in Nollan v. California Coastal Commission, 107 S. Ct. 3141 (1987) has said these kind of exactions must be directly connected to the needs generated by the development. All residents or occupants of the

development will use and require roads, water, and sewer. Not all will use or require school facilities. There is no way to predict how many, if any, resident families may have school children, or whether they will use the public school system.

3. Article X, Section 8, of the Montana Constitution vests the control of schools in a local board of trustees. Allowing the county commissioners to impose impact fees for construction of school facilities raises serious implications for local control of a school district. The local control over buildings for the district could be effectively removed from the trustees and electors of the district and placed in the county commissioners approving the subdivision. The use of fees imposed permissively by one political subdivision to support a function of another political subdivision is questionable under any circumstance, but especially so in the case of schools where control is constitutionally vested in the school district trustees. Commissioners may not be convinced of needs expressed by school trustees, or may have other considerations not related to schools, that they must respond to in deciding on imposition of impact fees. Whether local control of schools is violated or not, the amendment certainly deeply involves counties and towns in the affairs of the school districts.

4. School facilities traditionally are funded by local property taxes which service bonds issued to fund construction of new facilities. New residents will pay property taxes that will service these bonds. If they also have to pay fully for new school facilities needed because of the new subdivision, then they will pay twice. Also sections 20-9-370 and 20-9-371, MCA, provide for state reimbursement to eligible districts for school facilities. Some other sources of revenue are also available. New development should not be responsible for any portion of funding for new facilities that comes from the state or other sources. But calculating a just apportionment of costs to alleviate undue excessive burden on new development can become very technical, and sure to generate litigation.

According to information distributed by the American Planning Association, approximately 20 states currently have impact fee enabling legislation. The vast majority of those do not allow school impact fees. In those that do, the fees range from \$135 to \$3,160 per single-family home, with an average of \$2,663. California law authorizes school impact fees of \$1 per square foot for residences and \$0.25 per square foot for non-residential buildings. By way of contrast, figures of \$11,000 to \$14,000 per new lot have been suggested for schools in Jefferson and Gallatin County over the past year.

Because of the significant impact on the cost of housing and the propensity for mischief in the exercise of the broad authority given by the proposed amendments, the Montana Building Industry Association strongly urges the committee to reject the amendments authorizing school impact fees. If such authority

EXHIBIT NO. 6
DATE 3.22.95
BILL NO. 11 B-473

is nevertheless deemed necessary, we strongly urge further defining and delimiting the authority of counties and towns, especially as to the amount of fee that may be imposed.

Sincerely,

Dave Cogley

Dave Cogley

Are Impact Fees Legal?

The following discussion provides a general framework for analyzing the legality of impact fees. It is important to know the law of your particular state and to consult with counsel because each jurisdiction has its own blend of precedents and applications for development exactions, dedications and fees.

However, the imposition of any type of fee raises two fundamental questions: is the fee really a "tax" (and thus illegal), and is the fee unreasonable (and thus unconstitutional)?

Is the impact fee authorized by state law?

The validity of impact fees often depends on whether they are classified as "fees" or "taxes." A local government's authority to impose fees derives from the police power to regulate development for the public health, safety or welfare, while its power to levy taxes is based on the tax power to raise general revenues. Both the police and tax powers reside with the state, and a local government has no authority to use either power unless a state constitution, statute or home rule charter delegates such authority.

A regulatory fee often needs only broad legislative delegation, but a tax requires express statutory authorization. An impact "fee" that is really a tax will be struck down if the legislature has not authorized a local tax on development. Even in some states allowing impact fees, if the fee goes beyond responding specifically to the burdens created by a new development on public services, the fee may be deemed illegal because it lacks state enabling authority.

Since the purpose of a regulatory fee is to finance a specific municipal service or capital expenditure, the fee amount should be reasonably equivalent to the cost of the activity regulated. If the charge unreasonably exceeds the cost of administering the regulation in question

or is levied for unrelated revenue purposes or goes into the general treasury rather than a special fund, it very well may be characterized as a tax. A charge also may be labeled a tax if it is not earmarked for the benefit of the development from which it was collected but is available for expenditure in a broad geographic area.

Is the impact fee constitutional?

State and federal constitutions protect property rights through three basic clauses: the equal protection clause, the due process clause, and the taking (or just compensation) clause.

Equal protection deals with the concept that citizens in like circumstances be treated the same under the law.

Due process has two different components—procedural due process and substantive due process.

Procedural due process means that a property owner must be given fair notice and an opportunity to be heard at a public hearing before governmental action is taken affecting his rights. Substantive due process connotes the idea that governmental action cannot violate a person's rights in an arbitrary, capricious or unreasonable fashion. For example, if a community has an impact fee policy (but no written ordinance), it raises the likelihood of arbitrary or capricious action because no owner knows what the rules are until he or she submits a development plan or applies for a permit. Or if an ordinance exists but it is vague or lacks sufficient standards, or its terms are demonstrably unreasonable, substantive rights to due process of law would be infringed.

The taking issue involves two separate questions: does the fee deny an owner all reasonable use of the property; and is the amount of the fee or extent of the exaction directly connected to the burden or need created by the proposed development on the public interest? The first

municipality in making capital improvements or providing services. Generally, only demonstrably excessive fees will be struck down.

Is the impact fee a "taking" of private property for public use without just compensation?

The taking question raises the issue of whether an impact fee is confiscatory. Taking challenges against fees rarely succeed because payments of fees do not deny the owner all reasonable use of the proposed development. The U.S. Supreme Court, however, in *Nollan v. California Coastal Commission*, 107 S.Ct. 3141 (1987), for the first time addressed the taking issue as it relates to development exactions. The Court found a taking because it saw no direct relationship between a condition attached to a building permit and any "substantial" advancement of a legitimate governmental interest.

In other words, the Court said there must be a direct connection between an exaction and a significant public interest, as well as between an exaction and the needs generated by the development. If no such connection can be

demonstrated, a taking could be triggered, requiring just compensation under *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 107 S.Ct. 2378 (1987). Because of the *Nollan* ruling, the exaction/taking area of law is in some state of flux. Government, at minimum, will have to demonstrate the specific need for a specific exaction in order to avoid a taking challenge. For example, a road impact fee required of a project in the north part of a county would be a "taking" if the funds were spent to improve roads in the south part of the county.

Under *Nollan*, it no longer is enough for government to defend itself from a taking challenge by merely saying it acted rationally. Government now must justify with plans, data, studies and solid information the link between its regulatory action and the impact created by the regulated property. The "substantial" advancement requirement means the courts are to apply a stricter level of scrutiny to challenged exactions.

In short, impact fees must be authorized by state law and applied in a nondiscriminatory, nonarbitrary, reasonable manner.

SENATE NATURAL RESOURCES

EXHIBIT NO. 7

DATE 8-22-95

BILL NO. HB-423

March 16, 1995

Senator Lorents Grosfield, Chairman
Senate Natural Resources Committee
Capital Station
Helena, MT 59620-1706

RE: VOTE AGAINST HB #473 - PROPOSED SUBDIVISION LEGISLATION

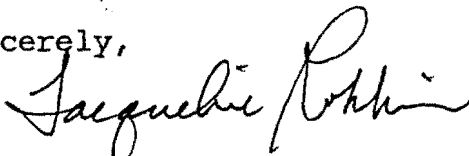
Dear Senator Grosfield and Committee Members:

This letter is in opposition to HB 473. HB #473 is an unfunded mandate passed from state government down to local governments. Again state government is demanding local governments pick up the tab for regulations they are imposing. In addition, the subdivision and platting act was revised two years ago and has only been in effect for eighteen months. It is too soon to change it.

The majority of proponents behind HB #473 are former representative Bob Gilbert and a group of realtors and surveyors. Consequently this bill seems to benefit a small minority of interests.

I urge that you oppose the legislation.

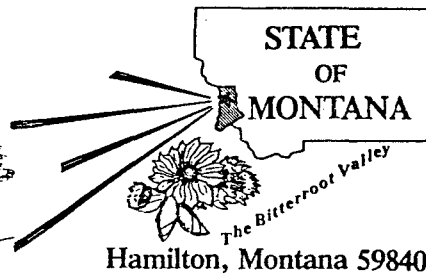
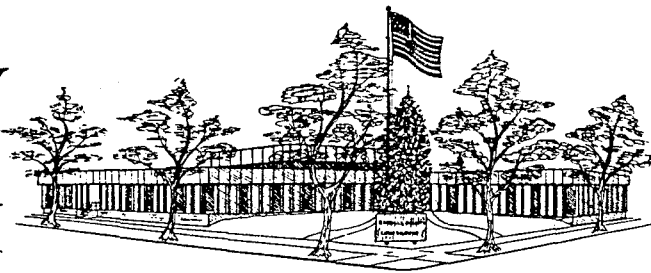
Sincerely,



Park County

cc: Governor Marc Racicot

COUNTY OF RAVALLI



March 16, 1995

Senate Natural Resources Committee
Capitol Station
Helena, MT

Committee Members,

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 3-22-96
BILL NO. HB-473

Your Committee is currently reviewing **House Bill 473** which would amend the state's subdivision rules. As a member of the Ravalli County Planning Board, I am concerned that this legislation will create more problems than it is intended to apparently fix.

General Comments:

1. The legislature in 1993 made major revisions to the subdivision regulations.
2. Based on statistics from the 20 fastest growing counties, over 97 percent of the subdivisions that were submitted for public review in 1994 were approved.
3. Based on the fiscal estimates attached to the legislation, it will cost local units of government over \$350,000 to comply with this new legislation if passed.

Question: Why is it necessary to again make changes at a great expense to local units of governments when the existing legislation is not creating problems for developers? If something is not broke, don't mess with it.

Limitation on Standing to Contest a Subdivision Decision (Section 10):

1. Within the last five years, there isn't a single case in Ravalli County where an aggrieved party has filed suit against the County for approving a subdivision.
2. The Planning Board has always encouraged people to participate in the subdivision review process and government in general.

Question: Why then, should you limit a citizen's only recourse to a potentially poor subdivision decision, when in fact this ability right now is not being abused? If something is not being abused, don't mess with it.

Changes to Parkland Dedication (Section 9):

1. Ravalli County is experiencing unprecedented growth and commensurate demands for public services, including recreational facilities.
2. The legislation would change the size of the parcel when a developer would have to provide land for recreational purposes from 10 acres to 5 acres.
3. This change would encourage developers to avoid park dedication requirements by creating parcels just over 5 acres.
4. A family on a 5.1-acre parcel will have the same demand for recreational facilities as the family living on a 4.9-acre parcel.

Question: Why would you want to limit the County's ability to provide recreational opportunities for the people who are buying these lots and are asking for appropriate facilities? This legislation would undermine a program that receives wide-spread citizen support throughout this county.

Based on these concerns and many others not outlined here, I urge you to vote against this legislation. Thank you for your sincere consideration.

Sincerely,

Buckle

Ravalli County Planning Board Member

Joann Lesh
Mich Stem
Daglo, Darket

J. Knudson
L. Lennards
R. Cann

852 WILCOUGHBY LANE
STEVENSVILLE, MT. 59870

MARCH 18, 1995

SENATE NATURAL RESOURCES

EXHIBIT NO. 9

DATE 3-22-96

BILL NO. HB-473

SENATE NATURAL RESOURCES COMMITTEE:

Please enter this for the record on HB 473 to
amend the Montana subdivision regulations.

I request you not add to the burden of local
governments in review and approval of subdivisions. Do
not restrict our local options, which already provide
almost no restrictions on subdivisions, to the
detriment of current taxpayers.

The primary action we do need from the state
is to tighten regulations on approval of groundwater
pumping and septic tank disposal. The current
regulations allow for a new residence to take
groundwater other people are using, and permit
groundwater pollution.

HB 473 as written should be rejected. Your
job is to protect Montana citizens, not the
profits of subdividers.

Sincerely,

Kirk Thompson

Ravalli County

Planning Board

March 13, 1995

Senate Natural Resource Committee, House Natural Resource Committee
Capital Station, Helena, Montana 59620-1706

SENATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE 3-22-95
BILL NO. HB-473

RE: Vote No on SB330, SB331, SB382, SB252, SB362, HB440, HB521, HB338,
HB543, HB201, HB263, HB473

I am writing to say that I am profoundly concerned about the all out attack on the fundamental policies and laws protecting Montanan's right to a clean and healthy environment by Republicans in our state's legislature. I, and I think most Montana's, want less bureaucracy, effective use of tax dollars, and imaginative and visionary leadership. We do not want to leave our children the future bureaucratic nightmare and untold tax burden that a short sighted, profit motivated repeal of existing measures protecting our water and air quality and land use practices will bring.

Montana's do not have to look far to find glaring examples of environmental degradation resulting from the absences of such protective legislation. The Milltown dam holds enough sediment from past mining projects to cover downtown Missoula with 70 - 110 feet of arsenic, iron, and manganese contaminated sediments. Enough to keep the head water of the Missoula aquifer polluted for thousands of years.

The public expects local, state and federal governments to clearly ensure their right to breath clean air, drink clean water and have healthy fish and wildlife populations. But if the Republican's "New Contract with Montana" is nothing more than a gutting of these laws for the profit of extractive industries and land developers (an overwhelming number of whom are out of state interests here to make a quick profit), then they have sorely missed the political intent of Montana voters!

Show me a bad law that wastes tax payer dollars-- not a bill that by repealing the limits to the degradation of Montana's water and air quality allows extractive industries to increase profits as does SB330, SB331, HB543, and HB521. Show me a bad law that wastes tax payer dollars-- not a bill that would allow the massive clear cutting of state owned forest for the profit of timber interests while giving schools the lack of assurance of future funding as does HB201 and HB263. Show me a law that doesn't give away local control of land use issues while creating another unfunded mandate as does HB473 which favors land developers.

The cost of protecting our state's water and air quality are real. They may also limit short term profits of extractive industries, but so be it. The cost of not protecting our environment is rarely balanced in this equation and may be even more costly. These are challenging times we live in. Old answers rarely fit. Yet the Republican's facade of bold new leadership to "save tax dollars" by selling our rights to a clean and healthful environment to extractive industries and big land developers will not fool most Montanans. The challenge to Republicans and Democrats alike is promote sustainable development calling on the stewardship responsibilities of citizens and businesses to preserve the quality of life Montanan's hold dear.

Mary Flowers
Farm to Market Rd
Whitefish, Mt 59937

March 16, 1995

Senator Lorents Grosfield, Chairman
Senate Natural Resources Committee
Capital Station
Helena, MT 59620-1706

SENATE NATURAL RESOURCES
EXHIBIT NO. 11
DATE 3-22-95
BILL NO. HB-473

RE: VOTE AGAINST HB #473 - PROPOSED SUBDIVISION LEGISLATION

Dear Senator Grosfield and Committee Members:

As a local planning board member I urge you to vote against HB #473. Subdivision review is one of the primary responsibilities of local planning boards. We spend a great deal of voluntary time and effort to make Montana a better place to live.

Two years ago the Montana Subdivision and platting Act was revised for the first time in twenty years. Planning boards spent many hours conducting public hearings, drafting language and making recommendations to County Commissioners on subdivision regulations. Many of them also attended training sessions on how the new law affected their decisions. There has been no demonstrated problem in this jurisdiction with current subdivision law.

If adopted, HB #473 will create an unfunded mandate to local governments. Once again planning board members would be asked to spend volunteer time and effort developing regulations, attending training workshops, and holding public hearings. Is state government going to provide funds for my additional trains costs?

It is my feeling as a local planning board member that there is no need to change the existing state subdivision law, and urge you to oppose HB #473.

Sincerely,



Park County Planning Board

cc: Governor Marc Racicot

Richard D. Idler
Land Use Counselor
P.O. Box 1631
Bigfork, Montana 59911
March 17, 1995

SENATE NATURAL RESOURCES
EXHIBIT NO. 12
DATE 3-22-95
BILL NO. HB-473

The Honorable Lorents Grosfield
Montana State Senate
P.O. Box 201702
State Capitol
Helena, MT 59620 1702

Re: Bill 473 Senate Natural Resources Committee

Dear Senator Grosfield:

I'm leaving for Colorado this afternoon and am anxious to get my remarks to you concerning Bill 473.

Since time allotted for testimony expired before I was heard on March 15, I respectfully request that the enclosed information be circulated to committee members for their consideration prior to your executive session on this matter.

As you can tell I have grave reservations on the proposed changes to the reforms that were incorporated in the 1993 legislation. The purpose of subdivision regulations is to protect the health, safety, and welfare of the public at large. It is not to assure that real estate agents can close "deals" and get commissions within a shorter time frame.

Sincerely,


Richard D. Idler

cc: Office of the Governor

DATE 7-22-95

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 412, HB-473

Exp Action

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
WARREN P. LATVALA	SELF, MARLS	473	✓	
Dexter Basby	MT. Refining	412	✓	
Dave Cogley	Self-MBIA	473	✓	
W ^m SPILKEN	Self-MAR	473	✓	
Pick Gustine	MARLS	473	—	
Robert Queen	self	473	✓	
Kathy Macfield	City of Helena	473		X
Jim Richards	MT Ass'n Planners	473	✓	
Ted Lange	NPRC.	473		X
J.V. Bennett	MontPIRG	412		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-22-95 BILL NO. HB 473 NUMBER 1

MOTION: To Adopt AMENDMENT

No hb0473.amlr

PASSED 7-4

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-22-95 BILL NO. HB-473 NUMBER 2

MOTION: To Adopt AMENDMENT # hb 043701.amk

PASSED

7-4

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3.22.95 BILL NO. HB-473 NUMBER 2

MOTION: To ADAPT Amendment

h6047305. am12

No's 9-13 PASSED 7-4

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-22-95 BILL NO. _____ NUMBER 4

MOTION: To ADOPT Amendment

No 14

CARRIED 7-4

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 8-22-95 BILL NO. HB 473 NUMBER 5

MOTION: TO ADOPT AMENDMENT

17

CARRIED 6-5

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING		X
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-22-95 BILL NO. HB 473 NUMBER 6

MOTION: To Adopt Amendments

18, 20, 23, 24, 25, 26, 27 CARRIED 7:

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-22-95 BILL NO. HB-473 NUMBER 7

MOTION: To Adopt Amendment

19

CARRIED 6-4

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	Y	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN		
LORENTS GROSFIELD, CHAIRMAN	X	

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-22-95 BILL NO. HB-473 NUMBER 8

MOTION: To Adopt Amendment

21

PASSED 6-4

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN		
LORENTS GROSFIELD, CHAIRMAN	X	

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-23-95 BILL NO. HB-473 NUMBER 9

MOTION: To Adopt Amendment

Striking Line 18 subsection (b) Page 8

PASSED 6-4

NAME	AYE	NO
VIVIAN BROOKE		x
B.F. "CHRIS" CHRISTIAENS		x
MACK COLE	x	
WILLIAM CRISMORE	x	
MIKE FOSTER	x	
TOM KEATING	x	
KEN MILLER	x	
JEFF WELDON		x
BILL WILSON		x
LARRY TVEIT, VICE CHAIRMAN		
LORENTS GROSFIELD, CHAIRMAN	x	

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-22-95 BILL NO. 128-473 NUMBER 10

MOTION: To Adopt Amendment

30 + Adding "private" and Amendment

31 striking "material"
CARRIED 6-4

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN		
LORENTS GROSFIELD, CHAIRMAN	X	

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-22-95 BILL NO. HB-473 NUMBER 11

MOTION: To 17dept AMENDMENT

No hb 047303. amk

CARRIED 6-4

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN		
LORENTS GROSFIELD, CHAIRMAN	X	

SEN:1995
wp:rlclvote.man
CS-11

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

DATE 3-22-95 BILL NO. HB-473 NUMBER 12

MOTION: TO CONCUR IN HB473

175 AMENDED

CARRIED 7-4

NAME	AYE	NO
VIVIAN BROOKE		X
B.F. "CHRIS" CHRISTIAENS		X
MACK COLE	X	
WILLIAM CRISMORE	X	
MIKE FOSTER	X	
TOM KEATING	X	
KEN MILLER	X	
JEFF WELDON		X
BILL WILSON		X
LARRY TVEIT, VICE CHAIRMAN	X	
LORENTS GROSFIELD, CHAIRMAN	X	